

No. 2162

United States
Circuit Court of Appeals
For the Ninth Circuit.

ERI THOMPSON and J. M. CUMMINGS,

Appellants,

vs.

J. L. REED,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Alaska,
Third Division.

FILED

AUG 19 1912

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys of Record.

E. E. RITCHIE and J. L. REED, Valdez, Alaska,
Attorneys for J. L. Reed, Plaintiff and Appellee.
S. O. MORFORD, Seward, Alaska, Attorney for Eri
Thompson, Defendant and Appellant.
THOMAS R. SHEPARD, Attorney for J. M. Cum-
mings, Defendant and Appellant. [1*]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Amended Complaint.

Plaintiff complains and alleges:

I. That on the 25th day of April, 1910, he recovered judgment against the defendant, Eri Thompson, in this court, for the sum of Fifteen Hundred and Ninety-eight and 60/100 Dollars (\$1598.60), which judgment draws interest at the legal rate from date until paid, and costs amounting to Thirty-two and 65/100 Dollars (\$32.65), and that said judgment, with costs and accruing costs, is still wholly unpaid and in full force and effect.

II. That on the first day of July, 1910, an execution was duly issued out of this court pursuant to

*Page number appearing at foot of page of original certified Record.

said judgment and thereafter was duly returned by the United States Marshal of this Division wholly unsatisfied, on the 26th day of August, 1910; and thereafter, on the 2d day of September, 1910, an *alias* execution was duly issued out of this court pursuant to said judgment, directed to the United States Marshal of the Third Division of Alaska, to levy upon, seize and take into execution personal property of said Eri Thompson in said Third Division sufficient to satisfy said judgment and costs, and if a sufficient personal property could not be found in said Division to satisfy said judgment, then and in that case to make the amount thereof out of real property belonging to said defendant in said Division, not exempt from execution; and that said [2] *alias* execution was in due course thereafter returned into the clerk's office of this court wholly unsatisfied, said return alleging that no property of said Eri Thompson could be found in said Third Division subject to execution and levy.

III. Plaintiff further alleges that on or about the 22d day of May, 1910, a certain paper writing purporting to be a deed of conveyance and which was in form a deed of conveyance, purporting to convey from the defendant Eri Thompson to the defendant J. M. Cummings certain real and chattel property, the same being then and now the property of the defendant Eri Thompson, was filed for record in the office of the Recorder of Cook Inlet Precinct, at Susitna, Alaska, and was thereafter duly recorded in the records of said office. The property purported to be sold and conveyed by said purported deed was

described therein as follows, to wit:

That certain placer mining claim known as the Battle Ax, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson & Price's saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon was situated.

That certain log house adjacent to John Jones' bath-house, and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first party and also that certain log cabin situated in the rear of said log house, with all chattels therein contained.

IV. Plaintiff alleges that said purported deed was not made in good faith nor for any valid consideration, but was a device for, [3] and was made and received with, the intention of placing the property of said Thompson beyond the reach of creditors, and particularly this plaintiff, and for the purpose of hindering, delaying and defrauding this plaintiff in the collection of his said judgment, and that said purported sale and conveyance were made and accepted in consummation of a combination and conspiracy between said Thompson and said Cummings to defraud plaintiff and other creditors; that said deed was made many months prior to the recovery of plaintiff's judgment in this court against said

Thompson but long after the action to recover the same was filed, but said deed was not recorded nor filed for record until nearly a month after said judgment was rendered in this court and until a transcript of said judgment had been sent by plaintiff's attorney in said action to the United States Commissioner and ex-officio recorder of said Cook Inlet Precinct at Susitna, wherein said property was situated, to be recorded in the records of said precinct, in order that said judgment might become a lien upon the real property of the defendant Eri Thompson situated in said precinct, as provided by law; that said purported deed of conveyance from said Eri Thompson to said J. M. Cummings was thereupon filed for record in the office of the recorder of said precinct about three hours before the filing of the transcript of plaintiff's judgment, according to the filing record in said office.

V. Plaintiff alleges that the defendant J. M. Cummings has never taken possession of any of said property described in said purported deed, real or personal, but that the same has remained in the custody and under the control of said Eri Thompson, who has at all times exercised the rights of ownership of the same, and said Eri Thompson is now in complete possession and control of all of said property.

VI. Plaintiff alleges that the judgment referred to in paragraph I of plaintiff's amended complaint was a judgment recovered by plaintiff in this court in cause Number 233, entitled Thomas H. Meredith versus Dave Wallace and Eri Thompson, copartners as Wallace & [4] Thompson, and against Dave

Wallace and Eri Thompson, copartners, jointly and severally.

Plaintiff further alleges on information and belief that Dave Wallace departed from the Territory of Alaska on or about the month of October, 1907, and that he has not returned to the said Territory since said date. That he departed from the Territory of Alaska for the purpose of defrauding and defeating plaintiff in the collection of his claim upon which this Court rendered judgment in favor of plaintiff and for the further purpose of hindering, delaying and defrauding the plaintiff in the collection of the same. That Dave Wallace has no property, real or personal, in the Territory of Alaska or elsewhere known to plaintiff out of which plaintiff could satisfy this judgment and that the said Dave Wallace is insolvent.

VII. Plaintiff alleges that the personal property reconveyed to the defendant Eri Thompson by J. M. Cummings as set forth in paragraph III of defendant Cummings' answer was mortgaged by the said Thompson on the 14th day of July, 1910, to one W. Murphy. That said mortgage was recorded in the office of the recorder at Susitna, Alaska, on the 15th day of July, 1910.

That said mortgage and deed heretofore set forth were given and made for the purpose of hindering, delaying and defrauding plaintiff in the collection and satisfaction of plaintiff's judgment herein. That said mortgage and deed transferred all of the property, real and personal, of the defendant Eri Thompson in the Territory of Alaska or elsewhere

known to plaintiff, and out of which he could satisfy his judgment herein, and that the said Eri Thompson is insolvent.

VIII. That plaintiff on information and belief alleges that neither Dave Wallace nor Eri Thompson have any other property, real or personal, individual or partnership, other than that transferred by Eri Thompson to J. M. Cummings and by Eri Thompson mortgaged to W. Murphy heretofore described out of which he could secure the payment and [5] satisfaction of his judgment herein.

IX. That plaintiff has no plain, speedy and adequate remedy at law.

WHEREFORE plaintiff prays for a decree of this Court declaring said purported deed of conveyance from the defendant Eri Thompson to the defendant J. M. Cummings to have been without any consideration and made in fraud of creditors of said Eri Thompson, and that the same be vacated, set aside and held for naught; and that the property therein described be decreed to be still the property of said Eri Thompson; and subject to the lien of plaintiff's said judgment against said Eri Thompson, and that in the meantime the said defendants, and each of them, be restrained and enjoined from alienating or attempting to alienate or transfer or encumber the said property, or any part thereof, until the hearing of this cause and for all equitable relief.

J. L. REED,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,
Third Judicial Division,—ss.

J. L. Reed, being duly sworn, deposes and says: That he is the plaintiff's attorney in the above-entitled action, that he has read the foregoing Amended Complaint and knows the contents thereof, and believes the same to be true; that he makes this verification for the reason that plaintiff is several hundred miles distant from the seat of this Court, and that all of the material allegations of this complaint are within affiant's personal knowledge.

J. L. REED.

Subscribed and sworn to before me this 21st day of April, 1911.

[Notarial Seal]

L. V. RAY,

Notary Public. [6]

I certify that the foregoing is a full, true and correct copy of the Amended Complaint in the above-entitled action.

J. L. REED,

Attorney for Plaintiff.

Service of a copy of the within Amended Complaint on this 21st day of April, 1911, is hereby acknowledged.

S. O. MORFORD,

Attorney for J. M. Cummings.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 22, 1911. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [7]

*In the District Court in and for the Territory of
Alaska, Third Judicial Division.*

S.—9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

**Demurrer [of J. M. Cummings] to Amended
Complaint.**

Comes now the defendant J. M. Cummings, by his attorney, S. O. Morford, and demurrers to the Amended Complaint herein, and for cause of demurrer states:

I.

That said amended complaint does not state facts sufficient to constitute a cause of action against the defendant, J. M. Cummings.

II.

That said amended complaint does not state facts sufficient to entitle the plaintiff to equitable relief, or any relief, against this defendant.

Wherefore, this defendant prays that he may be hence dismissed with his costs.

S. O. MORFORD,

Attorney for Defendant J. M. Cummings.

Service of a copy of the within demurrer to amended complaint is hereby accepted this 26th day of April, 1911.

J. L. REED and

E. E. RITCHIE.

Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 26, 1911. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [8]

*In the District Court in and for the Territory of
Alaska, Third Judicial Division.*

#S.—9.

THOMAS H. MEREDITH,

Plaintiff.

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

**Demurrer [of Eri Thompson] to Amended
Complaint.**

Comes now the defendant, Eri Thompson, by his attorney, S. O. Morford, and demurrers to the Amended Complaint herein, and for cause of demurrer states:

I.

That said amended complaint does not state facts sufficient to constitute a cause of action against the defendant Eri Thompson.

II.

That said amended complaint does not state facts sufficient to entitle the plaintiff to equitable relief, or any relief, against this defendant.

Wherefore, this defendant prays that he may be hence dismissed with his costs.

S. O. MORFORD,

Attorney for Defendant Eri Thompson.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jun. 15, 1911. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [9]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Minute Order Overruling Demurrers, etc.

Now on this day, this matter coming on to be heard upon defendants' demurrers to the amended complaint on file herein, Reed and Ritchie appearing as attorneys on behalf of the plaintiff and S. O. Morford, Esq., appearing as attorney on behalf of the defendants, and after argument had and the Court, being fully advised in the premises, overrules said demurrer, to which order and ruling defendants except and exception allowed and

IT IS FURTHER ORDERED that defendants have until November, 1911, to answer or otherwise plead herein.

The above is a Minute Order found at page 356, Journal 6, under date September 25, 1911. [10]

*In the District Court in and for the Territory of
Alaska, Third Division.*

S.—9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Answer of J. M. Cummings to Amended Complaint.

Comes now J. M. Cummings, one of the defendants in the above-entitled action, answering separately and for himself alone unto the complaint on file herein:

I.

Answering unto the Third paragraph in plaintiff's amended complaint contained, states:

That on or about the 25th day of October, 1909, this defendant purchased from defendant Eri Thompson that certain placer mining claim, known as the "Battle Axe," located on Thunder Creek, a tributary to Cache Creek, in Cook Inlet Mining and Recording Precinct;

Also an undivided one-half ($\frac{1}{2}$) interest in and to that certain saloon building situated in the town of Susitna, Alaska, known as Thompson and Price's saloon, together with and including all fixtures, cigar and liquor licenses;

Also that certain log house adjacent to John Jones' bath-house, and lying between said bath-house and the general merchandise store of H. W. Nagley, in

said Susitna, together with all the fixtures and chattels therein contained, owned by said Eri Thompson;

Also that certain log cabin situated in the rear of said log house, with all chattels therein contained, comprising all the property mentioned in said Third paragraph in plaintiff's amended complaint contained, and paid said Eri Thompson therefor, One Thousand Five Hundred Dollars (\$1500) in full for said properties; [11]

And that then and there, defendant Eri Thompson executed to this defendant a deed therefor, and delivered possession thereof to this defendant, and ever since that time this defendant has been, and now is the lawful owner, and in lawful possession of all of said property, save and except as hereinafter stated:

That on the 22d day of May, 1910, this defendant recorded said deed of conveyance in the recording office of Cook Inlet Precinct, at Susitna, Alaska, the recording precinct wherein said property is situate.

This defendant denies that said property, so conveyed by Eri Thompson to this defendant, was on the 22d day of May, 1910, or is now, or has been at any time since the 25th day of October, 1909, the property of the said Eri Thompson, or that he has had any interest therein, or possession thereof, at any time since the 25th day of October, 1909, save and except as hereinafter stated.

This defendant avers that on or about the 15th day of February, 1910, he sold and delivered to defendant Eri Thompson all his interest in and to the

saloon stock and licenses in that saloon commonly known as Thompson & Price's saloon, at Susitna, Alaska, and rented the saloon building and other buildings purchased by this defendant from said Eri Thompson on the 25th day of October, 1909, and described in the Third paragraph in plaintiff's amended complaint contained, to the said Eri Thompson, for and at the rental sum of Twenty-five Dollars (\$25) per month; and that since that time the said Eri Thompson has had no interest, right or title therein, other than as tenant of this defendant.

II.

Answering unto the Fourth paragraph in plaintiff's amended complaint contained, this defendant denies that said deed and conveyance mentioned in paragraph Three of plaintiff's amended complaint, was not made in good faith and for a valid consideration; denies that it was a device for, and was made and received with the intention of placing the property of defendant Eri Thompson beyond the reach of creditors; denies that said deed was executed for the purpose of hindering, delaying and defrauding plaintiff in the collection of his judgment; denies that said purported sale and conveyance were made and accepted in consummation of [12] a combination and conspiracy between this defendant and defendant Thompson to defraud plaintiff and other creditors, or in fraud of any person or persons whomsoever.

III.

This defendant answering unto the Fifth paragraph in plaintiff's amended complaint contained

denies the same and the whole thereof.

IV.

Answering unto the Seventh paragraph in plaintiff's amended complaint contained, this defendant has no knowledge, information or belief as to the truth of the matters set forth in said Seventh paragraph, and therefore denies the same and the whole thereof.

This defendant further answering unto plaintiff's amended complaint on file herein, alleges:

I.

That, on the 25th day of October, 1909, he purchased from defendant Eri Thompson all his right, title and interest in and to all the property mentioned in plaintiff's amended complaint, for a valuable consideration of One Thousand Five Hundred Dollars (\$1,500), lawful money of the United States of America, and that on or about the 15th day of February, 1910, this defendant sold and reconveyed to defendant Eri Thompson the undivided one-half ($\frac{1}{2}$) interest in and to the stock of goods, licenses and saloon business mentioned in paragraph three of plaintiff's amended complaint, and delivered immediate possession thereof to defendant Eri Thompson.

II.

This defendant alleges and avers that he has no knowledge or information that defendant Eri Thompson was, on October 25, 1909, indebted to any person or persons whomsoever, or that said defendant Thompson sold this defendant the property mentioned in plaintiff's amended complaint, or any of it, for the purpose of defrauding, hindering or de-

laying the plaintiff, or any person or persons whomsoever. [13]

III.

That plaintiff's amended complaint does not state facts sufficient to constitute a cause of action against this defendant.

IV.

That plaintiff's amended complaint does not state facts sufficient to entitle plaintiff to equitable relief against this defendant, or any relief.

V.

That plaintiff's amended complaint does not state facts sufficient to give the Court jurisdiction of the cause.

Wherefore this defendant prays that he may be hence dismissed with his costs.

S. O. MORFORD,

Attorney for Defendant J. M. Cummings.

United States of America,
Territory of Alaska,—ss.

J. M. Cummings, being first duly sworn, says: That he is one of the defendants in the above-entitled action; that he has read the above and foregoing answer, knows the contents thereof, and that the same is true as he verily believes.

J. M. CUMMINGS.

Subscribed and sworn to before me this 24 day of October, A. D. 1911.

[Seal]

S. O. MORFORD,

Notary Public for Alaska.

Service of copy acknowledged this 27th day of October, 1911.

E. E. RITCHIE,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 27, 1911. Ed M. Lakin, Clerk. By V. A. Paine, Deputy. [14]

*In the District Court in and for the Territory of
Alaska, Third Division.*

S.—9.

THOMAS H. MEREDITH,

Plaintiff.

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

**Answer of Defendant Eri Thompson to Amended
Complaint.**

Comes now Eri Thompson, one of the defendants in the above-entitled action, and answering personally and for himself alone unto plaintiff's amended complaint herein:

I.

Answering unto the Third paragraph thereof, denies that he was the owner, or had any interest in the property described in said third paragraph in plaintiff's amended complaint contained, on May 22, 1910, or at any other times since October 25, 1909, save and except an undivided one-half interest in the stock, liquors and licenses in what is known as the Thompson and Price saloon, which said undivided

one-half interest was at all times since about the 25th day of February, 1910, up to and including the 19th day of May, 1911, the property of this defendant, and in his possession.

II.

Answering unto the Fourth paragraph in plaintiff's amended complaint contained, this defendant denies that said deed and conveyance mentioned in paragraph three of plaintiff's amended complaint, was not made in good faith and for a valid consideration; denies that it was a device for, and was made and received with the intention of placing the property of this defendant beyond the reach of creditors; denies that said deed was executed for the purpose of hindering, delaying and defrauding plaintiff in the collection of his judgment, or at [15] all; denies that said purported sale and conveyance were made and accepted in consummation of a combination and conspiracy between this defendant and defendant Cummings, to defraud plaintiff and other creditors, or in fraud of any person or persons whomsoever.

III.

Answering unto the Fifth paragraph in plaintiff's amended complaint contained, this defendant denies that defendant J. M. Cummings has never taken possession of any of said property described in plaintiff's amended complaint, and avers that defendant J. M. Cummings has been the owner and in possession of all of said property described in plaintiff's amended complaint, since the 25th day of October, 1909, and this defendant is informed and believes

that said Cummings is now the owner of all of said property, save and except the undivided one-half interest in the stock of goods and licenses in what is known as Thompson and Price's saloon.

IV.

Answering unto the Seventh paragraph in plaintiff's amended complaint contained, this defendant denies that a mortgage made by this defendant to W. Murphy was made for the purpose of hindering, delaying or defrauding plaintiff in the collection of his judgment, or in fraud of any person or persons whomsoever, and alleges that the same has been fully paid and satisfied.

V.

This defendant further answering unto plaintiff's amended complaint, alleges:

1. That this defendant sold all of said property mentioned in plaintiff's amended complaint, about the 25th day of October, 1909, to J. M. Cummings, one of the defendants herein, for the sum of Fifteen Hundred Dollars (\$1,500), lawful money of the United States of America, which sum was fully paid.
[16]

2. That on or about February 15, 1910, this defendant repurchased from defendant Cummings the undivided one-half interest in the saloon stock and business, heretofore conveyed on October 25, 1909, to defendant Cummings, and immediately thereafter went into possession thereof, and continued to own and remain in possession of the same until the 19 day of May, 1911.

VI.

This defendant further avers:

1. That at no time was he indebted to Thomas H. Meredith or his assignors, in any sum whatever, and at no time was he in partnership with Dave Wallace in the mining business;

2. That the judgment secured against this defendant was secured by fraud, perjury and mistake;

3. That at the time this defendant made the sale to J. M. Cummings, set forth in plaintiff's amended complaint, and for a long time prior thereto, this defendant had been at Valdez, Alaska, endeavoring to secure a trial of the cause of Meredith vs. Thompson and Wallace, that plaintiff was not ready for trial, and would not consent to the trial of said cause, and that this defendant was informed by his attorney that no just cause of action existed against him;

4. That this defendant sold the property mentioned in plaintiff's amended complaint to the defendant J. M. Cummings for full value, and at a time when this defendant did not owe any debts in the Territory of Alaska, except on saloon stock which Cummings assumed.

Wherefore, this defendant prays that he be hence dismissed with his costs.

S. O. MORFORD,
Attorney for Def. Eri Thompson.

United States of America,
Territory of Alaska,—ss.

Eri Thompson, being first duly sworn, says, that he is one of the defendants in the above-entitled action; that he has read the [17] above and forego-

ing Answer, knows the contents thereof, and that the same is true, as he verily believes.

ERI THOMPSON.

Subscribed and sworn to before me this 23 day of October, A. D. 1911.

[Notarial Seal] H. W. NAGLEY,
Notary Public in and for the Territory of Alaska,
Residing at ——.

Service of copy acknowledged this 10th day of January, 1912.

E. E. RITCHIE,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 11, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [18]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

versus

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Reply [to Answer of J. M. Cummings].

Comes now Thomas H. Meredith, the plaintiff herein, and replying to the answer of the defendant J. M. Cummings to the Amended Complaint herein, setting forth an affirmative defense, says:

I.

Plaintiff replying to the first and second paragraphs of the Answer containing new matter, says that he has not knowledge or information sufficient to form a belief as to the new matter contained therein, therefore denies each and every allegation thereof.

J. L. REED, and
E. E. RITCHIE,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

J. L. Reed, being duly sworn, deposes and says that he is the plaintiff's attorney in the above-entitled action; that he has read the foregoing Reply and knows the contents thereof, and he believes the same to be true; that he makes this verification for the reason that plaintiff is several hundred miles distant from the seat of this court, and that all the material allegations of this reply are within affiant's personal knowledge.

J. L. REED. [19]

Subscribed and sworn to before me this 14th day of February, 1912.

[Notarial Seal]

L. V. RAY,
Notary Public for Alaska.

I certify that the foregoing is a full, true, and correct copy of the Reply in the above-entitled action.

J. L. REED,
Attorney for Plaintiff.

Service of a copy of the within Reply on this 14 day of February is hereby acknowledged.

S. O. MORFORD,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 16, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [20]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Reply and Demurrer [to Answer of Eri Thompson].

Comes now Thomas H. Meredith, the plaintiff herein, and replying to the answer of the defendant Eri Thompson to the Amended Complaint herein, setting forth an affirmative defense, says:

I.

Plaintiff replying to the Fifth paragraph and subdivisions One and Two thereof in the Answer containing new matter says that he has not knowledge or information sufficient to form a belief as to the new matter contained therein, therefore denies each and every allegation thereof.

II.

Plaintiff demurs to the new matter set forth in the

Sixth paragraph and subdivisions 1, 2, 3, and 4 thereof, for the reason that it appears upon the face thereof that such new matter does not constitute a defence or counterclaim.

J. L. REED and
E. E. RITCHIE,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

J. L. Reed, being duly sworn, deposes and says that he is the plaintiff's attorney in the above-entitled action, that he has read the foregoing Reply and knows the contents thereof, and he believes the same to be true; that he makes this verification for the reason that plaintiff is several hundred miles distant from the seat of this [21] court, and that all the material allegations of this reply are within affiant's personal knowledge.

J. L. REED.

Subscribed and sworn to before me this 14th day of February, 1912.

[Notarial Seal]

L. V. RAY,
Notary Public for Alaska.

I hereby certify that the foregoing is a full, true and correct copy of the Reply in the above-entitled action.

J. L. REED,
Attorney for Plaintiff.

Service of a copy of the within Reply on this 14 day of February is hereby acknowledged.

S. O. MORFORD,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 16, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [22]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

J. M. CUMMINGS and ERI THOMPSON,

Defendants.

Order Striking Part of Answer of Eri Thompson.

This cause coming on to be heard before the Court this 16th day of February, 1912, upon plaintiff's demurrer to the sixth defense of the answer of Eri Thompson, defendant, plaintiff appearing by his attorneys, J. L. Reed and E. E. Ritchie, and defendants appearing by their attorney, S. O. Morford, after argument by counsel it is ordered by the Court that said demurrer be treated as a motion to strike, and that the clauses of said sixth defense numbered in separate paragraphs 1, 2, 3, be stricken from said answer and that the paragraph of said sixth defense numbered 4 be allowed to stand.

Done in open court at Seward, Alaska, this 16th day of February, 1912.

EDWARD E. CUSHMAN,

Judge.

CLERK'S NOTE:

Offered for filing and entering Feb. 17, 1912.
Entered Court Journal No. S. 1, page 111.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 17, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [22½]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

**Reply to Eri Thompson's Answer to Amended Com-
plaint.**

Replying to the fourth subdivision of the sixth defense set up by the defendant Eri Thompson in his answer to plaintiff's amended complaint, plaintiff says:

That he denies each and every, all and singular, the averments and allegations therein contained.

J. L. REED and

E. E. RITCHIE,

Attorneys for Plaintiff.

United States of America,

Territory of Alaska,—ss.

J. L. Reed, being duly sworn, deposes and says, that he is plaintiff's attorney in the above-entitled suit; that he has read the foregoing reply and knows the contents thereof, and he believes the same to be true; that he makes this verification for the reason

that plaintiff is several hundred miles distant from the town of Seward, where the cause is now set for trial, and that all the material allegations of this reply are within affiant's personal knowledge.

J. L. REED.

Sworn to and subscribed before me this 16th day of February, 1912.

[Notarial Seal]

L. V. RAY,
Notary Public. [23]

I certify that the foregoing is a full, true and correct copy of the Reply in the above-entitled action.

J. L. REED,
Attorney for Plaintiff.

Service of a copy of the within Reply on this 16th day of February is hereby acknowledged.

S. O. MORFORD,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 16, 1912. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [24]

*In the District Court in and for the Territory of
Alaska, Third Division, Holding Terms at Sew-
ard.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,
Defendants.

Affidavit for Continuance.

United States of America,
Territory of Alaska,—ss.

S. O. Morford, being first duly sworn, deposes and says: That he is the attorney for J. M. Cummings in the above-entitled cause;

That Eri Thompson, one of the defendants in said cause, resides at Susitna, Alaska, about 175 miles distant from Seward, Alaska;

That no communication can be had between Seward and Susitna, other than by mail once a month;

That it was understood that Eri Thompson would leave Susitna and arrive in Seward, before February 1st, 1912;

That affiant is informed that said Eri Thompson, sometime in the month of January, this year, met with an accident which caused him to be confined to his bed, through an injury to his back;

That he was confined to his bed at the date when the last mail left Susitna for Seward, which was about January 25, 1912, since which time no information has been received by affiant as to said Eri Thompson;

That said Thompson is an important witness in behalf of defendant Cummings;

That if said Thompson were present here, he would testify that he left Susitna, Alaska, in September, 1909, and did not return until February, 1910; [25]

That he acquired the interest of J. M. Cummings in the saloon business at Susitna, Alaska, in January,

1910, being the same business and interest sold to said Cummings by himself (Thompson) in 1909;

That he owned an undivided one-half interest in the license and saloon business from January, 1910, until October, 1910;

That since October, 1910, he has not been interested in, nor has he conducted a saloon at Susitna or elsewhere;

That said Thompson would testify that, on or about May 22, 1910, he received from Joe Beedy, a deed of conveyance executed by himself to J. M. Cummings, dated October 25, 1909, conveying the property in controversy to J. M. Cummings, and that Joe Beedy, at the time, stated to him that J. M. Cummings had sent the deed from Knik for record, and requested that he, Thompson, would place it of record for Cummings;

That said Eri Thompson would further testify that H. S. Farris left Susitna, Alaska, about September, 1909, and did not return to Susitna again until February, 1910.

That said Thompson would further testify that he sold the property described in the complaint in this cause to J. M. Cummings in October, 1909, for the sum of \$1,500.00, \$500.00 of which was in cash, and \$1,000.00 in debt owing by Thompson to Cummings;

That the sale of the saloon interest was subject to the outstanding debts and accounts for stock purchased;

That in January, 1910, he repurchased the interest in the saloon stock and license, subject to the outstanding debts and accounts against the saloon, and

went into possession of the same, and was the owner of the undivided one-half interest, until October, 1910;

That he sold the property mentioned in the complaint to defendant Cummings for full value;

That he owed no debts at the time, other than those upon the stock of the saloon, which were assumed by defendant Cummings; [26]

That at the time he made the sale of said property he had no idea that any judgment would be recovered against him in the suit pending, wherein Thomas Meredith was plaintiff and Dave Wallace and Eri Thompson were defendants;

That the cause of Meredith vs. Wallace and Thompson was at issue and ready for trial at Valdez in October, 1909;

That he waited in Valdez until November, 1909, for trial of said cause;

That if said cause had been tried at that term of court, and judgment had been rendered against him, he had sufficient means to have paid the judgment, and would have paid the same;

That the debt for which the judgment was obtained was contracted by Dave Wallace without the authority, and without the knowledge of said Eri Thompson, and many months after the time that Dave Wallace and Eri Thompson had dissolved partnership;

That he made the sale to said Cummings in good faith and without intention to defraud any person whomsoever;

That there was no understanding between defendant Cummings and himself that the sale was made

for any other purpose than for value, which was paid, and that he (Thompson) has had no interest in the property in controversy, since October 25, 1909, except the stock of goods and license repurchased from defendant Cummings in January, 1910;

That said Eri Thompson would further testify that he worked the mining claims in controversy, during the summer of 1909, and that the expenses exceeded the amount taken from the claims.

S. O. MORFORD.

Subscribed and sworn to before me this 16th day of February, A. D. 1912.

CURTIS R. MORFORD,

Notary Public in and for the Territory of Alaska,
Residing at Seward.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 16, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [27]

CLERK'S NOTE:

Original page 28 was carried forward and made 22½ in order that pleadings would come chronologically. [28]

Filed in the District Court, Territory of Alaska,
Third Division. Jun. 22, 1912. Ed. M. Lakin, Clerk.
By V. A. Paine, Deputy.

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Bill of Exceptions and Transcript of Evidence.

Be it remembered, That the above-entitled cause came on duly and regularly to be heard before the Honorable EDWARD E. CUSHMAN, Judge of said Court, at Seward, Alaska, in said Third Division, on Saturday, the 17th day of February, 1912:

The plaintiff herein being represented by J. L. Reed, Esq., and E. E. Ritchie, Esq., his attorneys and counsel.

The defendants being represented by S. O. Morford, Esq., their attorney and counsel.

Opening statements were made to the court on behalf of the plaintiff by Judge Reed and on behalf of the defendants by Mr. Morford:

Whereupon the following additional proceedings were had: [29]

Mr. REED.—We desire to offer in evidence the judgment which is based upon the Findings of Fact and Conclusions of Law in Case #233 of this court, entitled Thomas H. Meredith vs. Dave Wallace and Eri Thompson, also the executions which are issued upon that judgment and the returns thereof, as

shown by the files in that case.

(They are admitted and marked Plaintiff's Exhibit "A"—copies are attached hereto and made a part hereof.)

By the COURT.—I understand that your offer includes the execution and alias execution?

Judge REED.—Both of the executions issued on the judgment in that cause.

Judge REED.—We now offer in evidence the quitclaim deed, a certified copy of it, upon which the action is based—a quitclaim deed from Thompson to Cummings quitclaiming, as we allege, all his property both real and personal.

(It is admitted, without objection, marked Plaintiff's Exhibit "B," and read to the Court by Judge Reed. Copy is attached hereto and made a part hereof.)

Judge REED.—We next offer in evidence a transcript of our judgment, showing that it has been filed for record and the date of filing, which we claim would create a lien upon the real property of the defendant Eri Thompson in the Cook Inlet recording precinct.

(It is admitted without objection, and marked Plaintiff's Exhibit "C." Judge Reed reads it to the Court.)

Judge REED.—At this time I desire to introduce in evidence two calendars of the year 1910, showing that the 22d day of May was on Sunday—that both of these papers were filed for record on the Sabbath.

[30]

(Both calendars are admitted and marked Plaintiff's Exhibit "D.")

Judge REED.—I now desire to offer in evidence the mortgage of Thompson to W. Murphy, a certified copy of it.

Mr. MORFORD.—I object to that as immaterial in this case. It is admitted that there was a mortgage, and in the Answer of Thompson it is alleged that it has been paid and satisfied. I also object to the introduction in evidence of the alleged mortgage, as it is shown on the face of the mortgage that it is void between the parties and not entitled to record—even if the facts set forth are true, it would not protect the property from execution, in that it is not executed as required by the statute, that both mortgagor and mortgagee ever made it in good faith.

By the COURT.—It is not offered for that purpose—it is not offered as a binding effective mortgage—objection overruled.

(To which ruling of the Court counsel for defendants is allowed an exception.)

Judge REED.—This deed of conveyance from Eri Thompson to Cummings made on the 25th day of October, 1909, conveys to Cummings the license and stock of liquors in the saloon at Susitna, and I desire to offer in evidence the license to show that there never was any transfer of the license from Thompson to Cummings—that is, there is no order of the Court making the transfer and that the license still remained in Thompson's name while the right was alleged to have been sold under the deed conveying this interest, and we will show that Cummings conducted the saloon without a license; that he was doing business without a license from October 25, 1909 to

February 15, 1910, when he [31] says he resold the stock, etc.

MR. MORFORD.—One of the parties was the same,—it was not a transfer of the entire property. Cummings merely purchased the interest of Thompson and the business was conducted without a general order of the Court transferring the license to Cummings, from Price & Thompson to Price & Cummings.

By the COURT.—Is there anything you hope to show that is not covered by the admission of Mr. Morford?

Judge REED.—I think not.

By the COURT.—Then I don't see the necessity of offering them.

Judge REED.—I now offer in evidence the deposition of H. S. Farris, taken on the 4th day of November, 1911, at Susitna, before H. W. Nagley, Notary Public.

(The deposition is admitted and read by Judge Reed as follows:)

[Deposition of H. S. Farris.]

Q. State your name, residence and occupation.

A. H. S. Farris; Susitna, Alaska; United States Commissioner.

Q. State how long you have resided at Susitna, Alaska. A. Three years.

Q. How long have you known Eri Thompson?

A. About three years.

Q. State what occupation Eri Thompson has been engaged in from the time you first became acquainted with him until the present time.

(Deposition of H. S. Farris.)

A. Saloon business.

Q. How long has Thompson resided at Susitna?

A. Three years, to my knowledge. I don't know how long before that.

Q. When did you first know Thompson at Susitna and in what business was he engaged?

A. Three years ago. In the saloon business.

Q. Who were his partners at Susitna, if any?
[32]

A. When I first came here Frank Dunn was his partner—later, M. F. Fry; then Hugh Price was his partner.

Q. Where were you on the 25th day of October, 1909? A. Valdez, Alaska.

Q. State whether you took an acknowledgment of a quitclaim deed dated the 25th day of October, 1909, between Eri Thompson, grantor, and J. M. Cummings, grantee, at Valdez, Alaska.

A. I took an acknowledgment of a quitclaim deed from Eri Thompson to J. M. Cummings at Valdez, Alaska. I don't know exact date, but in October some time.

Q. State fully all the circumstances preceding the taking of the acknowledgment.

A. Thompson requested me to draw a deed for him, conveying his interest in the saloon business in Susitna and his placer claim on Thunder Creek.

Q. Was J. M. Cummings present at the time of the taking of the acknowledgment?

A. I am quite sure he was; yes.

Q. After the acknowledgment was taken, state

(Deposition of H. S. Farris.)

what became of the deed, and whether same was delivered in your presence, and to whom?

A. I am not positive. I believe it was delivered to Cummings at the time.

Q. Was anything said by either Thompson or Cummings as to why the deed was made or concerning the property conveyed in the deed? If, so, state fully what was said.

A. Nothing said, that I remember.

Q. After October 25, 1909, did you see Thompson at Susitna? A. Yes.

Q. Did he continue in the same business at the same place after [33] October 25, 1909, as before that time? A. Yes, he was still in the saloon.

Q. What changes did you notice either in the building, stock of liquors or other personal property, manner in which the business was conducted, name under which business was conducted, the persons actually present conducting business, of the saloon business known as Thompson & Price after October 25, 1909? State when those changes were made and by whom.

A. I never noticed any changes, if there were any.

Q. State under what name the business was generally known to have been conducted after October 25, 1909.

A. It was generally spoken of as Thompson & Price.

Q. State whether Thompson was personally present conducting the saloon business after October 25, 1909, and if so, for how long.

A. He reached Susitna in February, 1910, a few

(Deposition of H. S. Farris.)

days after myself; some time during the later part of the month of February, and conducted the saloon business from then until the later part of October, 1911.

Q. Was Cummings ever at Susitna? If so, state when and for how long.

A. He was never here to my knowledge. I did hear that he was here for a day or so,—I was out of town.

Q. Did Cummings ever in person conduct the saloon business known as Thompson & Price at Susitna? If so, state when and for how long.

A. No.

Q. State the exact time when the deed referred to in Question 9 was recorded, and at whose request.

A. I will have to look it up, as I don't remember the exact time it was recorded. It was recorded at the request of Thompson. (Later.) It was recorded May 22, 1910, 8:30 P. M. [34]

Q. Was Cummings at Susitna at the time the deed was recorded? A. No.

Q. State the time when the mail arrived at Susitna on the 22d day of May, 1910.

A. There were two mails arrived May 22, 1910; the first at about 2 o'clock P. M.; the second about 10:30 P. M.

Judge REED.—I will also read the deposition of Hugh Price, taken at the same time and place, before the same notary.

[Deposition of Hugh Price.]

Q. State your name, residence and occupation.

A. Hugh Price; Susitna, Alaska; miner.

Q. How long have you resided in Susitna, Alaska?

A. I arrived here about the 17th of April, 1909, and have been here about ever since.

Q. State whether or not you were ever in partnership in the saloon business with J. M. Cummings; if so, state when, where and how long.

A. I owned one-half interest in the saloon at Susitna with him from October 25, 1909, to October, 1910.

Q. Under what name was the business conducted?

A. I did the business without change.

Q. When did you first enter into partnership in the saloon business with Eri Thompson? State under what name the business was conducted and for how long continued and when dissolved.

A. I entered into the partnership in the saloon with Thompson about August 15, 1909. Business conducted as Thompson & Price. Thompson left in October, about the first, as near as I can remember. Did not come back until February, 1910, and then he took the business back again.

Q. Did you ever own any personal property jointly with J. M. Cummings? If so, state what the same consisted. [35] A. License and liquors.

Q. State accounting you had with Cummings relative to any sales of personal property owned by you jointly with Cummings, when, where and how you made settlements and accountings with him. Have you any written memoranda pertaining to these ac-

(Deposition of Hugh Price.)

countings? If so, file same.

A. We still own the saloon; the stock has been sold.

Q. How often and in what manner did you account with Cummings relative to the losses or profits by reason of any partnership transaction in the saloon business at Susitna?

A. No accountings were made. Thompson bought back Cummings' interest in stock and license in 1910, about February, latter part, and I did business with Thompson.

Q. Did you ever own any real estate jointly with Cummings? If so, state what, and where located.

A. No. We each owned a separate half interest in the saloon.

Q. If you owned real estate jointly, state what arrangements you had with Cummings regarding leasing, where and when arrangements made and whether made with Cummings in person.

A. He looked after his own interest and I looked after mine.

Q. Were the arrangements made with any person acting for Cummings? If so, with whom?

A. No.

Q. If you owned real property jointly with Cummings, state if it was ever rented and who rented same and how often were the rents paid, and how were the rents paid to Cummings for his interest.

A. I gave an option to Ellexson for my half interest in the saloon building, and I saw a lease from Cummings to Ellexson where he had rented the saloon building to Ellexson. I know nothing of how the

rents are paid to Cummings. [36]

Judge REED.—We rest.

Mr. MORFORD.—At this time I wish to move for judgment and dismissal because of failure of proof. The question of fraud to set aside a conveyance is one of fact, and must be proved as other facts are proved. It must be shown that there has been a fraud on the part of the party holding the property. Even though there is an admitted fraud on the part of the party who sold the property, the property would necessarily be properly conveyed to the defendant, if it did not show that the defendant Cummings was a party to the fraud.

After argument the motion was by the Court denied. To which ruling counsel for defendants then and there duly excepted and the exception was by the Court allowed.

Judge REED.—We ask permission to offer in evidence at this time the findings of fact and conclusions of law in Case #233. I intended to include them in my former offer and thought I had done so.

(They are admitted in evidence, marked Plaintiff's Exhibit "F." Counsel for defendants objected to the admission at this time, which objection was overruled and exception allowed.)

AFTERNOON SESSION.

DEFENSE.

Mr. MORFORD.—At this time I desire to read affidavit made by me for a continuance of this action. (Copy of the affidavit is attached hereto and made a part hereof.)

Judge REED.—We move that the Court disregard all of the paragraph reading as follows:

“That the debt for which the judgment was obtained was [37] contracted by Dave Wallace without the authority, and without the knowledge of said Eri Thompson, and many months after the time that Dave Wallace and Eri Thompson had dissolved partnership.”

On the ground that each and every part of it is incompetent, irrelevant and immaterial to prove any of the issues in this case.

By the COURT.—In that paragraph, the part reading: “The debt for which the judgment was obtained was contracted by Dave Wallace without the authority”—without the authority will be stricken out because the Court must have found that it was with authority. “And without the knowledge of said Eri Thompson”—that may stand. “And many months after the time that Dave Wallace and Eri Thompson had dissolved partnership”—that will be stricken. That part may stand that has any effect in showing the good faith of the parties.

(The motion for a continuance was by the Court denied. To which ruling of the Court defendants were allowed an exception.)

Whereupon the case was continued until the evening of February 19, 1912, when the testimony of J. M. Cummings, one of the defendants, was taken, as follows: [37½]

[Testimony of J. M. Cummings, for Defendants.]

J. M. CUMMINGS, called and sworn as a witness in behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. MORFORD.)

Q. What is your name and residence?

A. J. M. Cummings; Seward.

Q. You reside in Seward—how long have you been in Seward? A. Part of the time since 1905.

Q. Have you been in Seward most of the time since?

A. No; I was out about a year and a half during the time since 1905.

Q. You are the defendant in this action of Meredith against Cummings and Thompson, one of the two defendants, are you not? A. Yes, sir.

Q. State to the Court what, if any, property you ever purchased from Thompson.

A. I purchased from Thompson in October, 1909, some property at the station, three different log buildings and houses and some mining ground in Thunder Creek.

Q. Any saloon business or saloon stock?

A. Stock and fixtures and license, half interest.

Q. Half interest in the saloon stock and building?

A. Yes, sir.

Q. What did you pay for the property?

A. \$1,500.

Q. How was it paid?

A. I paid \$500 in cash and I gave a note I had of his for a thousand dollars that he owed me.

(Testimony of J. M. Cummings.)

Q. Thompson's note? A. Yes, sir.

Q. State for what he owed you that amount of money. [38]

A. He owed it to me for the business he bought me out of, in Katalla—half interest of the business I owned in Katalla.

Q. When did you sell him that? A. 1907.

Q. How much did you sell him the business for at that time?

A. I sold him the half interest I owned, stock and fixtures, for \$2,000.

Q. And a note for half and cash half?

A. Yes, sir.

Q. State whether or not there was any arrangement between you and Thompson that he should have any interest in that property after that sale, whether he retained any interest or not.

A. No, sir, there was not.

Q. State whether or not you had any knowledge that he was selling the property to avoid paying his creditors.

A. No, sir, I did not—I bought the property in good faith and thought he sold it to me the same way.

Q. Did you receive a deed for that property?

A. Yes, sir.

Q. I will ask you if this is the deed you received (handing witness paper).

A. Yes, sir, that is the deed.

(The deed is admitted in evidence, without objection, marked Defendants' Exhibit No. 1.)

Q. State whether or not you have had the deed

[Testimony of J. M. Cummings, for Defendants.]

J. M. CUMMINGS, called and sworn as a witness in behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. MORFORD.)

Q. What is your name and residence?

A. J. M. Cummings; Seward.

Q. You reside in Seward—how long have you been in Seward? A. Part of the time since 1905.

Q. Have you been in Seward most of the time since?

A. No; I was out about a year and a half during the time since 1905.

Q. You are the defendant in this action of Meredith against Cummings and Thompson, one of the two defendants, are you not? A. Yes, sir.

Q. State to the Court what, if any, property you ever purchased from Thompson.

A. I purchased from Thompson in October, 1909, some property at the station, three different log buildings and houses and some mining ground in Thunder Creek.

Q. Any saloon business or saloon stock?

A. Stock and fixtures and license, half interest.

Q. Half interest in the saloon stock and building?

A. Yes, sir.

Q. What did you pay for the property?

A. \$1,500.

Q. How was it paid?

A. I paid \$500 in cash and I gave a note I had of his for a thousand dollars that he owed me.

(Testimony of J. M. Cummings.)

Q. Thompson's note? A. Yes, sir.

Q. State for what he owed you that amount of money. [38]

A. He owed it to me for the business he bought me out of, in Katalla—half interest of the business I owned in Katalla.

Q. When did you sell him that? A. 1907.

Q. How much did you sell him the business for at that time?

A. I sold him the half interest I owned, stock and fixtures, for \$2,000.

Q. And a note for half and cash half?

A. Yes, sir.

Q. State whether or not there was any arrangement between you and Thompson that he should have any interest in that property after that sale, whether he retained any interest or not.

A. No, sir, there was not.

Q. State whether or not you had any knowledge that he was selling the property to avoid paying his creditors.

A. No, sir, I did not—I bought the property in good faith and thought he sold it to me the same way.

Q. Did you receive a deed for that property?

A. Yes, sir.

Q. I will ask you if this is the deed you received (handing witness paper).

A. Yes, sir, that is the deed.

(The deed is admitted in evidence, without objection, marked Defendants' Exhibit No. 1.)

Q. State whether or not you have had the deed

(Testimony of J. M. Cummings.)

recorded. A. Yes, sir.

Q. When and how did you have it recorded?

A. I sent the deed from Knik in May, 1910.

Q. To Knik or from Knik?

A. From Knik, Susitna Station. [39]

Q. How did you send it?

A. By a party that was going around at the time the ice went out of the river.

Q. By whom? A. Joe Beede.

Q. Do you remember the date you sent it?

(Objected to as immaterial—overruled.)

A. I am not sure; I think it was about the 17th or 18th of May; I am not positive.

By the COURT.—What is the date of record?

Mr. MORFORD.—The 22d of May, I think.

Mr. RITCHIE.—The 22d, 11 P. M.

Q. Was there any other opportunity to send it from Knik about that time?

A. I don't think there was; after I went to Knik that spring the trail was pretty well broke up and there was some Indians went over it—I don't remember of any white people going over.

Q. Was this the first opportunity to send it by responsible parties?

A. I think it was as I remember.

Q. Do you remember whether it was returned to you recorded? A. Yes, sir.

Q. How did you receive it?

A. I got it through the mail some time about the first of June.

Q. Do you know who sent it back, whether it was

(Testimony of J. M. Cummings.)

the recording officer?

A. I am not sure, but I think it came from the recording office.

Q. Was the amount that you paid for this property a fair value?

A. I think it was at the time, from the information I had of [40] what was there.

Q. Did you ever sell the property or any portion of it back to Thompson?

A. I sold him a half interest in the stock and license.

Q. When was that?

A. That was in February, 1910.

Q. Was there any particular reason why you sold it to him?

A. He went outside and when I bought his interest over there he expected to go to British Columbia and go into business, but he came back; before he came back I heard from pretty bad reports the way the business was run over at the Station there and he wanted to buy my interest back in the stock and license, and I had a chance to go into business at Knik at the time and I thought it was a better proposition than the station, and I sold him back the interest in the stock and license—wanted him to sell all my interest I had bought of him over there—he said he would have bought it but he didn't have the price.

Q. What did you do with reference to the building, the interest in the saloon building?

A. He paid me rent.

(Testimony of J. M. Cummings.)

Q. How much did he pay you—how much was he to pay you for the rental of that saloon building?

A. Twenty dollars per month, my half interest.

Q. Did he pay that?

A. He paid me up to the time that he sold out.

Mr. REED.—How much?

A. Twenty dollars per month.

Mr. REED.—For your half interest in the saloon?

A. In the building.

Q. He settled with you for that up to what time?

[41]

A. He settled with me up to May 11th.

Q. Since which time who has had the building?

A. Ellixson.

Q. Has he paid you rent for it?

A. He paid me rent up to September, since May.

Mr. MORFORD.—That is all.

Cross-examination.

(By Mr. RITCHIE.)

Q. When did you come to Knik?

A. I went to Knik—I got there on the 19th day of April.

Q. Where did you come from, Seward?

A. Yes, sir.

Q. When did you leave Seward?

A. On the 5th day of April.

Q. How did you go, to the inlet?

A. Went to Seldovia and took a launch up.

Q. You went by boat, by water? A. Yes, sir.

Q. Where were you during the winter of 1909 and 1910?

(Testimony of J. M. Cummings.)

A. 1909 I was in Seward here, in the winter of 1909.

Q. During the entire winter,—were you here during the entire winter?

A. I was in Valdez the month of October and November.

Q. You were in Valdez as a member of the grand jury that term? A. Yes, sir.

Q. And the grand jury was discharged in the early part of November and you returned then to Seward?

A. Yes, sir.

Q. And you were in Seward then continuously, in or near the town, until you left here on the 5th of April to go to Knik? A. Yes, sir, I was. [42]

Q. What were you doing here that winter?

A. I wasn't doing anything.

Q. You went to Knik with George Pahner, did you not? A. Yes, sir.

Q. Did you engage in business with him there?

A. I was working in the saloon for him, in the saloon, and my wife was running the roadhouse.

Q. You were not in partnership with George?

A. No.

Q. When you bought this property from Thompson in October, how long had you been negotiating with him for it?

A. We never negotiated for it until we got to Valdez—we got talking about it; he wanted to go outside.

Q. How long before he made the deed had you been talking about it? A. I think a couple of days.

Q. Not more than that? A. Not more than that.

(Testimony of J. M. Cummings.)

Q. Farris drew that deed, I believe?

A. Yes, sir.

Q. It seems to be typewritten—where did Thompson sign it?

A. In the Seattle Hotel, if I remember right.

Q. Was the deed drawn up in your presence?

A. No, Eri Thompson went to him and had an understanding how he wanted this drawn up and what for, and I think he was rooming in the hotel—I don't know whether he drew it in the hotel or his office.

Q. You think you went up to his room to sign it?

A. No, I didn't sign it.

Q. You were present when it was signed, when Thompson signed it? [43]

A. It was signed in the hotel.

Q. Downstairs? A. Yes, sir.

Q. I see W. T. Scott was one of the witnesses—he was one of the hotel proprietors—this was signed on the hotel desk? A. I think it was; I am not sure.

Q. Was there anybody present but yourself and Thompson and Farris and Scott?

A. I don't think there was.

Q. Was the deed given to you there?

A. Yes, sir.

Q. And what did you do with it?

A. Put it in my pocket.

Q. And carry it until you came to Seward?

A. Yes, sir.

Q. You carried it in your pocket until then?

A. Yes, sir.

Q. And then kept it here in your possession dur-

(Testimony of J. M. Cummings.)

ing the winter? A. Yes, sir.

Q. Who was present when you paid Thompson the \$500? A. There wasn't anybody.

Q. Where was that done?

A. We went up in Thompson's room in the hotel.

Q. He roomed in the Seattle hotel? A. Yes, sir.

Q. What kind of money was it you paid him?

A. I paid him in currency, paper money, \$500.

Q. All currency? A. Paper money, it was.

Q. And you gave him the note at the same time?

A. Yes, sir. [44]

Q. Where was that note dated? A. Katalla.

Q. When did you dissolve partnership with Thompson at Katalla?

A. I never was in partners with him at Katalla.

Q. Where had you been in partnership with him?

A. I was in partnership with him in 1903 and 4 in Kayak Island.

Q. That is near Katalla?

A. Fourteen or sixteen miles from Katalla.

Q. That was in the summer of 1907?

A. It was in the summer of 1907 that I sold out to him in Katalla.

Q. What time of the year?

A. I sold out to him some time the last of August.

Q. And you came away then?

A. I went below; went to Seattle.

Q. You went outside and remained outside until you came back to Seward a year or two later?

A. I think I remained out until the spring of 1909.

Q. You say he was to pay you \$2,000 for your inter-

(Testimony of J. M. Cummings.)

est and you took half of that in this note?

A. Yes, sir.

Q. Did the note draw any interest?

A. No, sir, without interest.

Q. When was it payable? A. One year.

Q. One year after date, without interest?

A. Yes, sir.

Q. Then it was payable about the last of August, 1908? A. Yes.

Q. There never had been any payments made on it? A. Yes, sir. [45]

Q. It was more than a year past due?

A. Over two years when he paid me.

Q. It was two years old, but a little more than a year past due? A. Yes, sir.

Q. And he had never made any payments up to that time?

A. No; he wrote to me if I didn't need the money he would like to get more time on it when it was due.

Q. Did you know anything about Thompson's financial circumstances for the next two or three years after that?

A. No, sir, I never knew anything about his money matters.

Q. Do you know how long he remained there after you sold out? A. At Katalla?

Q. Yes.

A. Some time that winter; I don't remember when he left.

Q. Now, you were here all of the winter of 1909 and 10 from the time you returned from Valdez

(Testimony of J. M. Cummings.)

about the middle of November until the 5th of April—do you know how many mails go from here to Knik during the winter? A. I think there is three.

Q. One on the first day of each calendar month unless it is delayed for some reason, is there not?

A. January, February and March, yes, sir, I think.

Q. That is correct? A. Yes, sir.

Q. Was there any particular reason why you didn't send this deed by mail to be recorded?

A. Nothing more than I expected to go over in the spring and would record it when I went over.

Q. Were you expecting to go over all winter—did you expect in [46] the fall of 1909 that you would come to Knik the next spring?

A. Until February, until I sold to Thompson in February I expected to go.

Q. Do you know anything about how this business was handled up there that winter of 1909 and 10?

A. Why, after Thompson went back in February he was with Price until Price sold out to Ellixson.

Q. The winter of 1909 and 10 how was that business conducted, do you know?

A. I never was over there but once.

Q. Were you ever in Susitna before you sold this property? A. Never had seen it then; no, sir.

Q. How did you know about its value?

A. I was taking Thompson's word a whole lot and heard other fellows say what there was over there and what business there was.

Q. And you just took a chance at it?

A. I was taking a chance—most of my idea in buy-

(Testimony of J. M. Cummings.)

ing an interest was to get into business.

Q. Your intention at that time was to go to Susitna? A. Yes, sir.

Q. And go into business the next spring?

A. Yes, sir.

Q. You could have got in over the trail that fall?

A. I didn't think it was worth while—I heard it was quiet that winter.

Q. Do you know who was in charge of the place that winter? A. The winter of 1909?

Q. Yes. A. Price. [47]

Q. Did you know Price?

A. I saw him; I never was very well acquainted with him.

Q. Did you get any reports from Price that winter as to the progress of the business?

A. I wrote to Price after I bought, about the transaction, and that I would be over in the spring.

Q. When you bought this saloon did you get any inventory from Thompson as to what it contained?

A. He gave me a rough estimate of the stock on hand and what the outstanding debts were.

Q. What did he say the outstanding debts were?

A. The outstanding debts were, if I remember right, between seventeen and eighteen hundred dollars.

Q. What was that—that was due to outside liquor houses? A. Yes, sir.

Q. Was the stock worth that?

A. He figured that there was twenty-five or twenty-six hundred dollars.

(Testimony of J. M. Cummings.)

Q. This was simply open accounts, wasn't it, this indebtedness of seventeen or eighteen hundred dollars was simply open accounts?

A. It was accounts, the business end over there.

Q. There was no mortgage on it or anything of that kind? A. Yes, sir.

Q. And you assumed and agreed to pay half of that?

A. I assumed and agreed to pay half of that, and get half the profits in the spring when I went over.

Q. Did you know anything about this mining property of Thompson's?

A. Only what I heard and Thompson told me and from men I knew that worked on the railroad that I talked to. [48]

Q. Have you ever been on the mining property?

A. No, sir.

Q. What have you received from that mining property since you bought it? A. What royalties?

Q. Yes.

A. In the summer of 1910 I received 26½ ounces.

Q. From whom? A. Al Harper.

Q. You let a lay on that property to the Harper Brothers? A. To Al Harper.

Q. When was that—June? A. In June.

Q. Where?

A. Why, I signed the lay in Knik, the lease.

Q. And the arrangement was made there, was it, at Knik?

A. No, I think it was made at the station; it was sent over to me to sign. I think that Harper had the

(Testimony of J. M. Cummings.)

papers made out over at the station and Harper sent them to me through the mail.

Q. Sent them to you at Susitna? A. Yes, sir.

Q. Had he talked to you about it? A. Yes, sir.

Q. Where? A. In Seward.

Q. Before you went in there?

A. Before I went in there.

Q. But you came to no agreement there?

A. We came to no agreement there, he wanted to prospect first—he didn't want to give me the royalty. I wanted to allow prospecting on the ground. [49]

Q. And when did he send you the papers to Susitna? A. I remember it was in June.

Q. Prior to that time there was no lease of the property?

A. Only an understanding that if the ground suited him he could have it at a certain royalty.

Q. And he went up there to tell you—to get the lease? A. Yes, sir.

Q. The lease was made on the terms you agreed on here at Seward? A. Yes, sir.

Q. As a matter of fact, didn't he go to Susitna to talk to Thompson about it? A. I don't know.

Q. Thompson was in there, wasn't he?

A. At the station?

Q. Yes. A. He went back in February.

Q. When he bought back the liquor stock in February, 1910, what did he pay you for it?

A. Four hundred dollars.

Q. In cash? A. Yes, sir.

Q. What kind of money did he pay you?

(Testimony of J. M. Cummings.)

A. He paid me some gold and some currency—I don't remember the exact amount.

Q. Here in Seward? A. Yes, sir.

Q. What would you consider the saloon was worth above its indebtedness?

A. That is the way he sold to me, we agreed upon that price. [50]

Q. There was no accounting made then of the business that had been done during the winter?

A. No, sir.

Q. You just simply stepped out and he stepped in and let the thing go as it looked?

A. Yes, I didn't go over there.

Q. You never had any transfer made to your name—it was still running in the name of Thompson & Price? A. No, I did not.

Q. It was still running in the name of Thompson & Price? A. As far as I know, yes.

Q. When did you go to Susitna—I believe you said you had been there once?

A. I went over there in March, 1911.

Q. You never was there before? A. No.

Q. What income have you received now from that property at Susitna, from those houses—I believe there are three of them—since you bought it?

A. I don't remember exactly.

Q. Have you any account of it?

A. I don't believe I have.

Q. Never kept any account?

A. Never kept any account.

Q. Have you received remittances from time to

(Testimony of J. M. Cummings.)

time? A. Yes, sir.

Q. For rents? A. For rents.

Q. You say you are getting \$20 from the saloon?

A. Yes, sir. [51]

Q. During what time have you received that or has it been agreed that you should receive it?

A. Why, I collected back rents when I was over there in March and there has been money sent me different times for rent.

Q. When did this \$20 per month rent start?

A. The first of March, 1910.

Q. That was the agreement, as soon as Thompson went in? A. Yes, sir.

Q. And it has been \$20 a month from that day to this? A. Up to September.

Q. The first of last September?

A. Yes, it has been ever since but I made arrangements for the rent from September to go on my part of the expense on the building on the rear, the bar-room, where it has been built on.

Q. That \$20 per month was for the firm or for the half interest? A. For my half interest.

Q. Price owned the other half?

A. Up to the time he sold to Ellixson, I understand.

Q. And Thompson has paid you then from the first of March to the first of September?

A. No, Thompson paid me until May.

Q. And then Ellixson paid you?

A. Then, Ellixson paid me until September.

Q. May, 1911—you mean this last May?

(Testimony of J. M. Cummings.)

A. Yes, May, 1911.

Q. Did Thompson remit to you every month promptly?

A. No, sometimes it would be two months.

Q. How did he send the rent? [52]

A. Generally in currency.

Q. Through the mails? A. Yes, sir.

Q. Never sent a postoffice order? A. No.

Q. Nor a check? A. No.

Q. Did you ever receive a check from him at Susitna? A. I don't remember that I ever did.

Q. You don't know whether he keeps an account here in Seward? A. I do not.

Q. The money he just sent to you by somebody else or just— A. He put it in the mails.

Q. Registered it? A. No.

Q. Just simply without registering?

A. I don't remember his ever registering a letter to me.

Q. Just put the bills in an envelope and sent it— one, two or three months at a time that is \$20, \$40 or \$60? A. Sometimes one or two months.

Q. You don't think he ever registered it?

A. I don't remember that he did.

Q. And he never sent you a money order?

A. Not that I remember of.

Q. Nor a bank check? A. No.

Q. Nor an Alaska Commercial Co. check or draft?

A. I don't think he ever sent me any A. C. Co. draft.

Q. What rental have you received from the other

(Testimony of J. M. Cummings.)

buildings there?

A. The building that they have been using for a boarding-house. In the fall of 1910 Thompson's wife wanted to open a boarding-house [53] in that and the building was in bad shape.

Q. Had it been rented prior to that time?

A. No, not to my knowledge, and I told them any improvements they put on it—they could fix it up to suit themselves and it might be charged on the rent.

Q. And you have not received any rent from that?

A. I have not received any rent from that.

Q. Thompson sold out entirely—he sold out the saloon in May, 1911? A. Yes, sir, his interest.

Q. And at the same time Mrs. Thompson abandoned the roadhouse or gave it up?

A. I think about that time.

Q. Who took it after that, after Mrs. Thompson moved out of it—who took it?

A. A woman named Johnson moved in; Ellixson wrote me about the house; he had to do some repairs on it and he could rent it and I told him to go to work and do any repairing he wanted and use the house.

Q. That was about May?

A. I don't remember just when they went in, the Johnsons.

Q. Has Mrs. Johnson been in it ever since?

A. I think she has.

Q. You don't know? A. I am not sure.

Q. You haven't received any information about it?

(Testimony of J. M. Cummings.)

A. No.

Q. You don't know whether Eri Thompson sold that house to Mrs. Johnson in May, 1911, this road-house—you have never received any information that Thompson sold your house to [54] Mrs. Johnson or purported to sell it to her in July, 1911, and she took possession and purports to be the owner of it now?

A. Ellixson wrote to me there was a chance to sell the house and I wrote to him to sell it.

Q. Have you ever made a deed for it?

A. I signed a contract and option to Mrs. Johnson.

Q. Where was that drawn up?

A. At the station.

Q. By whom, do you know? A. I don't know.

Q. When was that sent to you?

A. I think in September.

Q. Did you sign it here in Seward and send it back? A. Yes, sir.

Q. Was it acknowledged before anybody?

A. Why there was a couple of parties witnessed it.

Q. Who were they, do you remember?

A. It was in the presence of Butts and I think Mr. Butts witnessed it.

Q. William Butts and some other party?

A. I think he witnessed it—I know he was present.

Q. Where did you sign it—where were you when you signed it? A. In Butts' store.

Q. And Mr. Butts and someone else signed it as a witness?

A. There were two witnesses signed it—I am not

(Testimony of J. M. Cummings.)

sure whether Butts was one or not.

Q. You think that was about September?

A. I think it was.

Q. What was that agreement? [55]

A. Why it was, if I remember—I ain't got the copy, I sent the copy to Ellixson and I ain't positive—I think there was \$200 to be paid every six months until the property was paid for.

Q. Have you received any information from that, as to what was done about that?

A. No, I have not—I wrote to Ellixson.

Q. You don't know whether she accepted it?

A. Yes, I got \$200 sent over to me.

Q. You got the \$200 when?

A. It was in September.

Q. How did you get that?

A. Al Harper fetched it over.

Q. In cash? A. No, in an A. C. Co. draft.

Q. You say you received 26½ ounces of gold in royalty the first year from the Battle Ax claims on Thunder Creek? A. In 1910.

Q. Yes—the first year you had them—26½ ounces? A. Yes, sir.

Q. That is all you received? A. In 1910.

Q. That was 25% of the yield? A. Yes, sir.

Q. That was worth about \$17 at the station?

A. \$17.50 over here.

Q. That would be about \$450? A. \$465.

Q. Now, what did you receive in 1911 in royalties?

A. Fifty-five ounces.

Q. Where was that paid to you? [56]

(Testimony of J. M. Cummings.)

A. Brown & Hawkins turned it over to me.

Q. About what time?

A. It was some time the last of September, if I remember right.

Q. Where was the 26½ ounces paid to you in 1910?

A. In Knik, in Palmer's store.

Q. When they came there?

A. When they came there in October.

Q. You waited there? A. Yes, sir.

Q. When did you come out from Knik?

A. I left Knik on the 28th day of March.

Q. Last year? A. Yes, sir.

Q. And you were in Knik from April, 1910, until March, 1911? A. Yes, sir.

Q. All the income you have ever received from this property, then, is the \$20 per month that Thompson and afterwards Ellixson paid you for rent, from the buildings, I mean, at Susitna—

A. Except he sent me \$200 that I got from Mrs. Johnson.

Q. What is the total amount you have received for that roadhouse? A. I was to get \$300.

Q. Two hundred dollars every six months?

A. If I remember right, that is what the option is—I sent the copy to Ellixson and give him charge of collecting it.

Q. Do you know where Thompson is now?

A. I think he is at the station.

Q. Do you know what he is doing there?

A. I learn he has been sick, the last report from him.

(Testimony of J. M. Cummings.)

Q. He has been out of business since last May as far as you know? A. As far as I know. [57]

Q. Did you ever have any trouble with any of your neighbors up on Thunder Creek over the Battle Ax group? A. No, sir.

Q. Never had any difficulty with Morgan of the Cache Creek, trouble over water?

A. I never had any trouble with him.

Q. Was Thompson authorized to act as your agent on this property at any time? A. No, sir.

Q. He has never had any trouble over that property at all? A. Not from me.

Q. And you have never had any special communication with him about it since you bought him out?

A. Not about the property since I sold my interest in that saloon.

Q. When you sent this deed over from Knik in May, 1910, whom did you give it to, to carry it over?

A. Joe Beede.

Q. Who is Joe Beede?

A. He is a man that used to be up here in 1905 and 6 and Sunrise and on the Inlet.

Q. Where is he now?

A. I heard he was drowned.

Q. Where? A. Over in the Arm.

Q. How long ago?

A. This last summer or fall.

Q. What was Joe Beede doing at Knik at that time?

A. He came from Sunrise in a boat, I remember; some sailboat or Columbia River boat going to the

(Testimony of J. M. Cummings.)

station, I know, had a passenger for Knik and took one or two around the station. [58]

Q. That was the first boat that went from Knik to the station in the spring of 1910?

A. That was the first I knew of any parties going to the station, I remember of.

Q. What did you tell Beede about this deed?

A. I told him I had a deed I wanted recorded and gave him the price and asked him to have it recorded when he got to the station.

Q. How did you know what the price was?

A. I just guessed at it.

Q. And you told him to take it to Farris and have it recorded? A. I told him to have it recorded.

Q. Did you tell him to give it to Thompson?

A. No, I didn't tell him to give it to anybody but have it recorded.

Q. Do you know whether or not he gave it to the recorder?

A. I don't know; I never asked him afterwards.

Q. Did any other boat go from Knik to Susitna about that time that you know of?

A. I don't remember.

Q. What was running from Seldovia at that time?

A. The "Bidarke" and the "Swan" made one trip I went up on before that and Murphy had a boat there.

Q. Did any boat carry mail from Seldovia?

A. Yes.

Q. What boat was that? A. The "Bidarke."

Q. Who was running that?

(Testimony of J. M. Cummings.)

A. I can't think of their names now—Ward and Odea.

Q. Was it a regular mail boat?

A. It was supposed to be but it was not very regular, though. [59]

Q. Did it go through any time that season before the time you gave the deed to Joe Beede?

A. I don't think it did—I don't think the "Bidarke" was there until after that time—I don't remember of it being there until along towards the first of June.

Q. What time did the ice go out of the Knik Arm that year?

A. It was way along toward the first of June.

Q. Weren't the boats running through May from Knik to the station?

A. I think they were, the last of May.

Q. Before the time Joe Beede took the deed over?

A. I never heard of any.

Q. That was the first chance you had to send the deed over after you went to Knik?

A. The first I remember of having.

Q. You had no agreement with Thompson at the time you made this deal with him that you were not to record that for a while?

A. No, sir, nothing said at all.

Q. You are sure of that?

A. I am sure of that.

Q. How many letters did you write to Price during the winter?

A. Only wrote once to him.

(Testimony of J. M. Cummings.)

Q. Why didn't you send the deed at that time to Price?

A. I didn't think there was anything urgent about it.

Q. You didn't think there was anything urgent about recording the deed?

A. I expected to take it over in the spring.

Q. Don't you know that a great many things can happen to a record title in six or seven months?

A. Yes. [60]

Q. When did you first hear there was a judgment against Eri Thompson?

A. It was about the time I went away from here, I think.

Q. The next spring, the spring of 1911?

A. Yes.

Q. You never heard it before? A. No.

Q. Was Thompson ever over at Knik during the time you were there?

A. He was there, I think, in 1911; came in on a launch.

Q. At the time you bought this property you say you paid Thompson \$500 in currency?

A. Yes, sir.

Q. How long had you been talking to him about that?

A. A couple of days we had been talking the proposition over.

Q. Did you have any dickering about the price?

A. No, not particular.

Q. How did you happen to pay him this \$500—

(Testimony of J. M. Cummings.)

did Thompson say he needed the money?

A. That was the price he agreed upon, \$1500 for his interest over there.

Q. How did you arrive at that value, just lumped it off?

A. Just taking Thompson's word about it and from information I had about the business over there.

Q. Where was Mrs. Thompson all this time, do you know?

A. Why, she was on her way outside and I think laid over a couple of weeks at Seldovia waiting for the boat—she came around on the boat and Thompson came over on the trail.

Q. She wasn't at Valdez at this time?

A. No, she went on the boat and went through Valdez. [61]

Q. Did Thompson tell you when he went out that he wasn't coming back?

A. He said he wasn't coming back if he could get into business down there, in a saloon.

Q. Did he ever tell you about the lawsuit he had on with some men?

A. I heard that there was a case coming up at that term of court.

Q. Did you talk to Thompson about that any?

A. Yes, sir.

Q. What did he say to you about it, that he expected the case to be tried? A. Yes, sir.

Q. And were you in Valdez when he went outside?

A. I left just before he went out.

(Testimony of J. M. Cummings.)

Q. And do you know whether or not the case was tried at that term?

A. No, I don't think I ever heard it was tried at that term.

Q. Don't you know as a matter of fact that when Thompson went out in November he went on business and expected to be back and expected that case to be tried, in the spring?

A. I don't know about that,—I talked with him about this case and he told me that there wasn't any chance for any judgment against him, and I talked to his attorney about the case and he told me there wasn't any suit against Thompson.

Q. Now, you say you sold back the liquor stock to Thompson for \$400?

A. The license and interest that I bought of him—he was to pay the debts and receive any profits that had been derived from it.

Q. And all that Thompson received from that property up there [62] then was \$100, and a thousand dollar note which he owed you?

A. I gave him \$500 and his note for a thousand at the time I bought it.

Q. And he gave you \$400 back?

A. He gave me \$400 back.

Q. So all the money you were out was \$100?

A. And the note.

Q. That was all the consideration—you consider that that was sufficient consideration—that was the agreed consideration for a house that rents for practically \$40 per month and an association group of

(Testimony of J. M. Cummings.)

eight mining claims?

A. I will tell you from all accounts and Thompson's,—at the time the mining claims were not supposed to be of much value and Thompson told me himself he worked it in 1909 and never made expenses.

Q. How did you happen to have \$500 with you at Valdez?

A. For quite a few years I have been in the habit when I went away to have a little money with me and pack it with me—I drew the money out of the bank.

Q. You didn't need \$500 for purposes at Valdez when you were drawing \$5 a day at Valdez?

A. I didn't know what I might run up against there.

Q. You might go against something and lose quite a lot of money?

A. You never can tell away from home.

Q. Do you know what was in the roadhouse up there at the time you bought it?

A. There was some furniture, not much.

Q. Was there any goods in it, any provisions or supplies? A. Not that I remember of. [63]

Q. What do you consider those houses worth since you have seen them?

A. Well, a log house is something,—if you get a sale for them sometimes you can get a good price and sometimes there ain't much value to it.

Q. It costs considerable to build them up in that country?

(Testimony of J. M. Cummings.)

A. It costs quite a little if you hire the work done.

Q. What does it cost to build a log house the size of that saloon up there?

A. I judge six or seven hundred dollars, it depends on what labor you hire; in some of those towns they hire the Siwashes and get the work done very cheap.

Q. How large a house is it?

A. I am not sure, I think it was about 22 by 28 or 30.

Q. And how large is the roadhouse?

A. It is about 24 by 34, I think.

Q. It is larger than the saloon? A. Yes.

Q. About how much would it cost with the ordinary price of labor in that country to build that roadhouse?

A. If you hired white men it would cost quite a little.

Q. Fix the amount. A. If it is Indian labor—

Q. Fix the amount, \$100 or a thousand?

A. I never built any log houses in this country.

Q. Do you think it would cost a thousand dollars to build it? A. No, I do not.

Q. Could you build both houses for a thousand dollars? A. I think a man could; I am not sure.

Q. You say that the rental of your half interest in your saloon building has been \$20 per month steadily until the [64] first of last September and you never received anything from the roadhouse?

A. No.

Q. Except the \$200?

A. Except the \$200 on the option.

(Testimony of J. M. Cummings.)

Q. How much have you paid out for improvements there?

A. I have never paid anything out—whatever was done on the roadhouse went on the use of it—the building that Ellixson put on the rear of the saloon, my part of the expense of that, the rent is to pay for it until it is paid for—he keeps back my part of the rent.

Q. In this case you filed an Answer—is that your signature? (Handing witness paper.)

A. Yes, that is my signature.

Q. Now, if this Answer to the amended complaint of the plaintiff says you received \$25 per month from Thompson and his successors up there for the rent of that house, it is a mistake, is it?

A. Yes, sir, \$20 is the amount.

Q. And if this Answer says that you paid \$1,500 in cash to Thompson on the 25th day of October, that is a mistake too?

A. I told you I paid with a note and \$500 in cash.

Q. Let me read to you from your Answer: That on the 25th day of October, 1909 he [meaning you] purchased from defendant Eri Thompson all his right, title and interest in and to all the property mentioned in plaintiff's amended complaint for a valuable consideration of One Thousand Five Hundred Dollars, lawful money of the United States of America, and that on or about the 15th day of February, 1910, this defendant sold and reconveyed to defendant Eri Thompson the undivided one-half interest in and to the stock of goods, etc. [65] What did you mean

(Testimony of J. M. Cummings.)

when you said \$1,500 lawful money—did you mean that your note from Thompson was lawful money?

A. Just as good as money, I considered it.

Q. Now, then, that cleared up everything between you and Thompson, did it, that sale—you paid him \$500 in cash and gave him his thousand-dollar note back? A. I gave him his note back.

Q. He got his thousand note back? A. Yes, sir.

Q. You say that that note was an outstanding indebtedness of about two years—that it was dated about the last of August, 1907? A. Yes, sir.

Q. This was two years and two months later?

A. Yes, sir.

Q. That note had been due to you all that time?

A. Yes.

Q. And you say Thompson told you he owed seventeen or eighteen hundred dollars on the saloon stock? A. Yes, sir.

Q. This statement in your answer is a mistake, then; it alleges that this defendant alleges and avers that he has no knowledge or information that defendant Eri Thompson was on October 25, 1909, indebted to any person or persons whomsoever or that said defendant Thompson sold this defendant the property mentioned in plaintiff's amended complaint or any of it for the purpose of defrauding, hindering or delaying the plaintiff or any person or persons whomsoever. Then when you swore to this Answer saying you did not know that Thompson was indebted to anybody, you were mistaken, he owed you a thousand dollars? [66]

(Testimony of J. M. Cummings.)

A. I didn't mean on the stock; I didn't think of that at the time.

Q. He owed about half of that? A. Yes, sir.

Q. And owed you a thousand dollars—you say he owed you \$1,000?

A. I had his note for a thousand dollars.

Q. You say here, you say in your sworn Answer, you say you did not know he owed anybody on earth; which is correct?

A. When was that—before I paid him his note?

Q. I will read this to you again. I will go back a little bit. I will read the first paragraph: That on or about the 25th day of October, 1909, this defendant purchased from defendant Eri Thompson that certain placer mining claim, etc., and proceeds to describe the mining property and these different houses and then proceeds to say: And paid said Eri Thompson therefor One Thousand Five Hundred Dollars in full for said properties, and that then and there defendant Eri Thompson executed to this defendant a deed therefor and delivered possession thereof to this defendant. Now, over here it repeats that: On the 25th day of October, 1909, he purchased from defendant Eri Thompson all his right, title and interest in and to all the property mentioned in plaintiff's amended complaint for a valuable consideration of Fifteen Hundred Dollars, lawful money of the United States of America. In the next paragraph you say: This defendant alleges and avers that he has no knowledge or information that defendant Eri Thompson was on the 25th day of October, 1909,

(Testimony of J. M. Cummings.)

indebted to any person or persons whomsoever. But you say, now, that he did owe you a thousand dollars and that he owed these other people half of seventeen or eighteen hundred dollars?

A. He owed a half interest of what was due on the stock. [67]

Q. So you knew that he was in fact indebted to you a thousand dollars and nearly a thousand dollars to other people?

A. I had his note for a thousand dollars.

Q. As a matter of fact, when were you at Susitna, how long?

A. I went over there one day and stayed all the next day and started back to Knik the third day.

Q. Did you receive any money while you were over there? A. Yes, sir.

Q. From whom? A. Thompson.

Q. How much did he pay you?

A. I think it was \$40 he paid me on that trip.

Q. What was that?

A. He paid me up to the first of April.

Q. Don't you know that it is common talk around this country and around Susitna Station that you took this deed from Eri Thompson for this property as a blind to enable Thompson to defeat this judgment?

A. I never knew of Thompson trying to beat anybody. I have been acquainted with him a good many years and done quite a little business with him and never knew of his beating anybody.

Q. Did Thompson give any reason when he sold you

(Testimony of J. M. Cummings.)

this property for wanting to sell except he was going outside?

A. Nothing, only he wanted to go outside to go into business.

Q. Did he say where he was going?

A. First, he was going to British Columbia, Vancouver and expected to go to the Prince Rupert country—he had a brother on one of those islands.

Q. And he told you positively he didn't expect to come back? [68]

A. If he could get into business down there.

Q. But if he did come back—

A. Then, he thought that he might get into something up here, he didn't know what he would do if he came back.

Q. When did you say the royalty was paid on the first year's lease? A. May.

Q. Where did you say the first lease was made?

A. I think it was in the station—it was sent to me at Knik.

Q. You signed it at Knik?

A. I signed it at Knik.

Q. Where was the second year's lease made?

A. There was only one lease.

Q. It was for two years?

A. That was for three years.

Q. Have you the lease with you or a copy of it?

A. I have not—I think the attorney has.

Q. When you sold back the liquor stock, did any papers pass between you? A. No.

Q. Just a verbal transaction?

(Testimony of J. M. Cummings.)

A. Just a verbal transaction—just a verbal contract.

Q. Now, you say the 55 ounces you got the second year was paid to you here in Seward, at Brown & Hawkins' bank?

A. He went into the bank—Al Harper—and requested Mr. Adams, the cashier, to give him his gold-dust, and he got out the dust and handed me the poke and said, "There is 55 ounces."

Q. Did you weigh it there? A. No, sir.

Q. What did you do with it?

A. Took it to the Bank of Seward and sold it there.

[69]

Q. You never gave Thompson anything of that?

A. No, sir.

Q. You said a while ago that Thompson has no authority to represent you in any way?

A. No, I never gave him any authority.

Q. Did you ever hear that in the summer of 1910, the month of July, when the Harper boys were having trouble with C. P. Morgan because he wanted to take water out of Thunder Creek, that they sent to Susitna Station and got Thompson, and he went up there and spent a week and had quite a row with the Morgans before he would desist taking water out of Thunder Creek?

A. I understood he was on Cache Creek and I never heard of his having trouble with Morgan.

Q. You don't know that he was having trouble there? A. No, sir.

Q. You never knew that he had trouble with Mor-

(Testimony of J. M. Cummings.)

gan and told him not to take water out of the creek?

A. No, sir.

Q. If he did that it was without authority from you? A. Yes, sir.

Q. When was it that you first heard about this sale to Mrs. Johnson?

A. I got a letter that was sent over here from a fellow that is supposed to be in partners with her, named Dennison.

Q. When was that?

A. Al Harper fetched it over—

Q. When he came out? A. Yes.

Q. That was the first you heard of it?

A. No, Ellixson wrote to me some time before that he had a chance to make a sale of the hotel. [70]

Q. What did you write to him?

A. I wrote him, gave him a figure on it—to sell it.

Q. Have you any letters in your possession now from either Ellixson or Thompson?

A. Not on me; no, sir.

Q. Have you any in your possession referring to business? A. I don't remember as I have.

Q. Have you any at your house?

A. I am not sure.

Q. Are you sure you have not?

A. No, sir, I am not—there might be some around the house.

Q. You don't know whether you have that letter from Ellixson referring to the sale of this property?

A. I am not sure of that; I might find it. I generally pack those things around in my pocket; some-

(Testimony of J. M. Cummings.)

times I lose them and sometimes I tear them up.

Q. You said you got that \$200 in an Alaska Commercial Co. check? A. A. C. Co. draft.

(Witness excused with instructions to make search for any letters relating to this transaction from Elixson or Thompson.)

(By Mr. MORFORD.)

Q. With reference to the statement in the complaint that you did not know that Thompson owed anything, was indebted to anybody at the time you purchased—what did you refer to?

A. I meant anybody in Alaska.

Q. You assumed the debts of the concern?

A. I was to assume the debts of the concern.

Q. And transferred your indebtedness to him?

A. Yes, sir. [71]

Q. And that was the only indebtedness there was, that Thompson owed, that you knew of? There was no other indebtedness that Thompson owed that you knew of? A. Not that I know of.

Q. How long have you known Thompson?

A. About sixteen or seventeen years.

Q. Do you know whether there was anybody at Susitna Station to record, any commissioner, there that winter?

A. Farris was out that winter; he was at Valdez during court and went outside and came back, I think, some time in February or March.

Q. And went to the station about what time?

A. It was either February or March, I think,—I

(Testimony of J. M. Cummings.)

don't remember seeing him but I heard he went through.

(By Mr. RITCHIE.)

Q. Didn't you see Farris when he was in town here? A. When he went through?

Q. Yes. A. I am not sure.

Q. Don't you know that he was in town here for a week, in Seward fully a week?

A. When he went back?

Q. Yes, when he went back, in February, 1910?

A. He was back over here—in 1910 or 11, he was here in town for two or three weeks, in the spring.

Q. He went out both winters? A. Yes, sir.

Q. Both 1910 and 1911? A. I think he did.

Q. To refresh your memory I will ask you if you do not remember that Farris went out about the time that Thompson did in [72] November, 1909, as soon as the Williams trial was ended?

A. He was in Valdez when I came away, Farris was.

Q. Do you know or do you not know whether Farris went outside that winter? A. I heard he did.

Q. He came back in February?

A. February or March he came through here—whether I met him or not I don't remember.

Q. If you wanted to get that deed on record as soon as you could, would it not have been a good idea to give it to the recorder as well as Joe Beede?

A. I suppose it would.

Q. It didn't occur to you to give it to Farris when he went through?

(Testimony of J. M. Cummings.)

A. A man like that has lots of stuff to pack over—I didn't think about it at that time.

Q. This deed wasn't very bulky, was it—two or three pages of typewriting—couldn't you give it to him to carry it over there; he was the recorder?

A. I suppose I could have.

Q. Where were you keeping the deed that winter? A. At home.

Q. You never thought of sending it to Susitna for record until you sent it by Joe Beede, a man who is now dead?

A. I sent it from Knik by Joe in 1911.

(By the COURT.)

Q. You say you were over at Valdez before this deed was made out attending court?

A. I was on the grand jury.

Q. How long had you been there? [73]

A. I went over; I think—got there, on the last day of September.

Q. Left there or here?

A. I got over there at Valdez.

Q. You got over to Valdez on the last day of September? A. Yes, sir.

Q. And left and got back early in November, was it? A. Yes, sir.

Q. You say before you went over there you drew \$500 out of the bank here?

A. I drew six or seven hundred, as I remember.

Q. Before you went over? A. Yes, sir.

Q. What bank were you banking with here?

A. The Bank of Seward.

(Testimony of J. M. Cummings.)

Q. Will that show in your account with it?

A. I don't know.

Witness excused. [74]

REBUTTAL.

[**Testimony of Al Wolf, for Plaintiff (in Rebuttal).**]

AL WOLF, called and sworn as a witness in behalf of the plaintiff, in rebuttal, testified as follows:

(By Mr. REED.)

Q. What is your name, occupation and residence?

A. Al Wolf; residence at Seward usually, excepting summer months; occupation, miner.

Q. Do you know Mr. Eri Thompson? A. I do.

Q. You are one of the parties in interest in this action having assigned your claim to Thomas Meredith? A. Yes, sir.

Q. Were you ever on Thunder Creek?

A. I have been.

Q. What year did you first work on Thunder Creek?

A. I believe it was in the year of 1907.

Q. How did you work—for hire? Who did you work for?

A. We went in with Steve Rowe. I was not supposed to go to work, but I went to work for Wallace afterwards. Wallace was supposed to rent the ground that year, but Steve Rowe had charge of it as soon as he arrived there and we went in with Steve Rowe in September.

Q. Without going into the question of the title of the property, tell the Court how much money was

(Testimony of Al Wolf.)

taken out of Thunder Creek property during that year.

(Objected to as immaterial and not rebuttal. Objection overruled and exception allowed.)

A. Well, when we arrived there I was told by the men—

By the COURT.—Tell what you know of your own knowledge.

A. About four thousand dollars, that I know of.

Q. What year?

A. That first year I went in and then Steve Rowe took out a [75] thousand dollars and there was a thousand dollars when I left there that I saw.

Q. Did you work on that property at any time subsequent to that year, 1907?

A. I worked five days for the Harper boys.

Q. Did you see Eri Thompson during the year 1910?

A. Not in the diggings, I don't believe.

Q. Where did you see him, if you saw him?

A. At the station.

Q. Did you see him any other place than the station? A. No, sir.

Q. In the year 1910?

A. In the year 1910 I met him in Seward, in February, before I went in.

Q. Did you have any conversation with Thompson relative to this Thunder Creek property? If so, state what it was—in February, 1910.

(Objected to, etc. Overruled.)

A. I did.

(Testimony of Al Wolf.)

Q. What was that conversation?

A. I spoke to him, trying to get a lay on the ground, as I didn't know for sure whether the Harper boys were coming, and he said he couldn't say a thing until the Harper boys came.

Q. Did you see Thompson after that?

A. I saw him around town, but didn't get to speak to him.

Q. Did you see Thompson and the Harper Brothers together? A. I did.

Q. Where?

A. I saw him going up the street, going into Judge Morford's office, and about an hour afterwards saw him come down the street. [76]

Q. How long was that after the conversation you had with him about the lay on Thunder Creek?

A. I wouldn't exactly mention the days, but it was within ten or fifteen days—that was all the time I was in town.

Q. Were you at the station from October 25, 1909, to February 15, 1910?

A. I was there on two different occasions.

Q. Were you in the saloon commonly known as Thompson & Price's saloon there?

A. I was in there several times.

Q. When was this?

A. In the fall of 1909 and in the winter of 1910.

Q. What time in the fall of 1909?

A. November, part of December, the first two days.

Q. Who was running that saloon?

(Testimony of Al Wolf.)

A. Price—Martin was tending bar. Carl Martin was tending bar.

Q. Did you see Cummings there?

A. I did not.

Q. Were there any signs in that saloon or on that saloon? A. If there was, I didn't notice.

Q. Did you ever see the name of Thompson & Price printed on any part of that saloon?

A. I have on a number of packages that arrived there, and boxes.

Q. Did you see any during the time you speak of?

A. I don't remember as to that—I couldn't say.

Q. Who was running that roadhouse during that winter, if you know?

A. I wouldn't say as to that, as I didn't stop at the roadhouse.

Q. How long were you on this Thunder Creek property in the year 1910?

A. Five or six days or seven days. [77]

Q. Did you see Thompson on the Thunder Creek property in the year 1910? A. No, I did not.

Q. Did you see Thompson during that year, 1910?

A. Only at the station.

Q. What time was that?

A. That was in February, and I believe in the fall,—I am not sure about the fall, though.

Q. Did you have any conversation with Thompson relative to the Thunder Creek property at that time?

A. No, I did not.

(By Mr. MORFORD.)

Q. During the time that you say you had this con-

(Testimony of Al Wolf.)

versation with Thompson about the lay on the Thunder Creek property in the year 1910, February, 1910, was Mr. Cummings in Seward at that time?

A. I couldn't say,—I wasn't acquainted with Cummings and would not have known him if he had been here.

Q. How much money did you actually see on Thunder Creek when you were there?

A. One thousand dollars.

Q. That is all you know of, of your own personal knowledge?

A. That is all I know of, of my own personal knowledge, and what was acknowledged to me by Steve Rowe.

(By Mr. REED.)

Q. Who took that out?

A. Mr. Johnson was foreman at the time.

Q. How many days' cleanup was that, do you know? A. I couldn't say.

Witness excused. [78]

[**Testimony of Arthur Meloche, for Plaintiff (in Rebuttal).**]

ARTHUR MELOCHE, called and sworn as a witness in behalf of the plaintiff, in rebuttal, testified as follows:

(By Mr. RITCHIE.)

Q. Where do you reside? A. Seward.

Q. What is your business? A. Miner.

Q. How long have you been in Seward?

A. Since the spring of 1906.

(Testimony of Arthur Meloche.)

Q. And where have you been working principally, as a miner?

A. Well, I have worked back here on the peninsula; I have been down on Prince Williams Sound and on Cache Creek and its tributaries, etc.

Q. What years did you work on Cache Creek and its tributaries?

A. I worked on Cache Creek last year and I worked on Thunder Creek in 1909 and 1910.

Q. On whose property did you work on Thunder Creek in 1909 and 1910?

A. I was working with a fellow named George Hersey in 1909.

Q. On whose property?

A. On his own. And I was working for the Harper Brothers on Thunder Creek in 1910.

Q. What was the names of the claims you were working on there? A. That I couldn't say.

Q. It was the property that the Harper Brothers had a lease on? A. Yes, sir.

Q. In 1910, how long did you work there that summer?

A. Well, I think I worked about forty-five days; I ain't positive.

Q. In what months?

A. In July and August.

Q. Who else was working there?

A. Frank Case was up there at the same time.

[79]

Q. And the Harper boys?

A. And the Harper boys.

(Testimony of Arthur Meloche.)

Q. Did you see Cummings up there that summer?

A. No, sir.

Q. Did you see Thompson up there?

A. Yes, sir.

Q. What was he doing?

A. When he came up there—

Q. Do you know what brought him up there?

A. I couldn't say.

Q. (By the COURT.) How far is it from Susitna Station to Thunder Creek?

A. They generally call it about one hundred miles.

Q. Do you know of any trouble with C. P. Morgan or the Cache Creek Company that summer?

A. C. P. Morgan came over while I was at work and I know they had some trouble about the water—to what effect I couldn't say.

Q. What was the trouble about the water?

A. Well, C. P. Morgan and the Cache Creek Company, through him, claims they are entitled to the water of Thunder Creek and the people of Thunder Creek claim they are not.

Q. Did you see Thompson around there about the time of this difficulty with Morgan?

(Objected to as immaterial—overruled—exception.)

Q. Did you see Thompson around there about that time? A. Well, just about that time, I think.

Q. Do you know how he happened to come there?

A. I couldn't say.

Q. (By the COURT.) Do you know that there was any trouble over the [80] water before he

(Testimony of Arthur Meloche.)

came? A. Personally, I do not.

Q. Did you hear anything of the trouble over the water before he came up there? A. Yes, sir.

Q. From whom did you hear it?

A. Just in a general way.

(Objected to—overruled—exception.)

Q. Did you hear anything of it from the Harper boys?

A. Well, I have often heard them talk about the Cache Creek Company trying to take the water away from them.

Q. Do you know whether or not they had any discussion with Morgan about it?

A. I couldn't say as to that.

Q. Do you know whether or not they sent for Thompson to come up? A. No, I do not.

Q. Do you know whether or not Thompson did come up about that time?

A. I know Thompson came up there about that time.

Q. Do you know whether or not he saw Morgan?

A. I don't know positively.

Q. Did you hear him say anything about the property? A. No, sir.

Q. Was he camped near you?

A. He was camped in the same camp—that is he boarded with us, at the same time.

Q. How long did he remain there?

A. A matter of about four or five days.

Q. Did you hear any discussion between him and the Harper boys [81] in regard to the difficulty with Morgan?

(Testimony of Arthur Meloche.)

A. Well, he did say something one day; I don't remember what I was doing at the time. It was at the noon hour, but I don't recollect what he said.

Q. Just tell what was said, if you can remember.

A. I couldn't say what he did say, now.

Q. Did Morgan come over to the camp while Thompson was there? A. No, I don't think so.

Q. Did Thompson go over to see him that you know of?

A. I think I heard him say one day he went over there to see him.

Q. About what? A. About this water affair.
(By Mr. MORFORD.)

Q. You heard him say that he was going over to see him about the water? A. Yes, sir.

Q. That is all you heard him say?

A. That is all I heard him say.

Witness excused.

**[Testimony of J. M. Cummings, for Defendants
(Recalled).]**

CUMMINGS, Recalled.

(By RITCHIE.)

Q. Have you made a search for any letters bearing on this property? A. Yes, sir.

Q. Have you any?

A. I have one from Thompson—I couldn't find any from Ellixson.

Q. Have you that letter with you? A. Yes, sir.

(After being read into the record the letter was stricken.)

Mr. REED.—I want to ask if he has any letters from Ellixson relative to the rent?

A. I have not—I can't find it. [82]

[Certificate of Official Court Stenographer to Bill of Exceptions and Transcript of Evidence.]

I do hereby certify that I am the official court stenographer for the Third Judicial Division, Territory of Alaska; that as such stenographer I reported the proceedings in the above-entitled cause and that the above transcript is a transcript of the shorthand notes taken by me at the trial of said cause.

J. HAMBURGER.

Dated at Cordova, Alaska, May 23, 1912. [83]

Filed in the District Court, Territory of Alaska, Third Division. Jun. 22, 1912. Ed. M. Lakin, Clerk. By _____, Deputy.

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Stipulation Touching Transcript of Evidence.

It is hereby stipulated between the parties to this cause that the annexed and foregoing official stenographer's transcript of evidence herein may be certified by the Judge of this court who tried this cause

to be a true and complete transcript of all the evidence adduced or offered on the trial herein, and may thereupon be filed as such by the clerk; and that the clerk of this court, in making up, certifying and transmitting the record on appeal herein, may include said original transcript of evidence in such record on appeal as a part thereof, with the consent of the trial Judge, instead of making a copy thereof as a part of the record on appeal.

J. L. REED,

Plaintiff, *in propria persona*.

S. O. MORFORD and

THOMAS R. SHEPARD,

Attorneys for Defendants.

Certificate [to Bill of Exceptions].

The undersigned, the Judge of the above-named court who presided at the trial of the above-entitled cause, hereby certifies, in pursuance of the foregoing stipulation of the parties and in accordance with the facts, that the annexed and foregoing bill of exceptions and transcript of evidence is a true and complete transcript of all the evidence adduced or offered at said trial and of all proceedings thereat.

Witness the hand of said Judge and the seal of said court, at Valdez, Alaska, this 22d day of June, 1912.

[Seal]

EDWARD E. CUSHMAN,

District Judge. [84]

[Plaintiff's Exhibit "A."]

*In the District Court for the Territory of Alaska,
Third Division, at Valdez.*

No. 233.

THOMAS H. MEREDITH,

Plaintiff,

vs.

DAVE WALLACE and ERI THOMPSON, Co-
partners as WALLACE and THOMPSON,
Defendants.

Judgment.

This cause coming on regularly for trial on the 5th day of April, 1910, E. E. Ritchie and J. L. Reed, appearing as counsel for plaintiff, and S. O. Morford, Esq., for the defendant Eri Thompson. A trial by jury having been waived by the parties, the cause was tried by the Court without a jury, whereupon witnesses on the part of the plaintiff and defendant were duly sworn and examined and the affidavit of S. O. Morford, Esq., as to what the defendant Eri Thompson would testify if present, and documentary evidence introduced by plaintiff and the evidence being closed, the cause was submitted to the Court for consideration and decision; and, after deliberation thereon, the Court files its findings of fact and conclusions of law in writing, and orders that judgment be entered herein in favor of plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that

Thomas H. Meredith, the plaintiff, do have and recover, of and from the defendants Dave Wallace and Eri Thompson, copartners, jointly and severally, the sum of One Thousand Five Hundred and Ninety-eight Dollars and Eighty Cents (\$1,598.80), with interest thereon at the rate of eight per cent per annum from the date hereof until paid, together with the plaintiff's costs and disbursements incurred in the action, amounting to the sum of \$32.65.

Dated this 25th day of April, A. D. 1910.

PETER D. OVERFIELD,
District Judge. [85]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. April 25, 1910. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy.

Entered Court Journal No. 5, Page No. 824.

Plaintiff's Exhibit "A," Cause No. S. 9. [86]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 233.

THOMAS H. MEREDITH,
Plaintiff,
vs.

DAVE WALLACE and ERI THOMPSON,
Defendants.

Alias Execution.

The President of the United States of America, to the Marshal of said Division and Territory, Greeting:

Whereas, Thomas H. Meredith recovered judgment

against Eri Thompson in the District Court for said Division and Territory, holding terms as aforesaid, on the 25th day of April, 1910, for the sum of Fifteen Hundred and Ninety-eight and 60/100 Dollars, with interest thereon at the rate of eight per cent until paid, and costs of suit, amounting to Thirty-two and 65/100 Dollars;

And whereas an execution was duly issued out of this court on the 1st day of July, 1910, and was returned in due course by the United States Marshal of said division on the 26th day of August, 1910, wholly unsatisfied;

THEREFORE, in the name of the United States of America, you are hereby commanded to levy upon, seize and take into execution the personal property of the said Eri Thompson, in your Division of said District, sufficient, subject to execution, to satisfy said judgment, interest and increased interest, costs and increased costs, and make sale thereof according to law; and if sufficient personal property cannot be found, then you are further commanded to make the amount of said judgment, interest and increased interest, costs and increased costs, out of his real property not exempt by law, and make return of this writ within sixty days from the date hereof.

Herein fail not, and have you then and there this writ.

Witness the Honorable EDWARD E. CUSHMAN, Judge of said Court, and the seal of said Court hereto affixed this 2d ———, A. D. 1910.

[Seal]

ED. M. LAKIN,
Clerk.

By Thos. S. Scott,
Deputy. [87]

Marshal's Return.

United States of America,
District of Alaska,
Third Division,—ss.

I hereby certify that I received the within Execution on the 2d day of September, 1910. at Valdez, Alaska, and after due and diligent search was unable to find any property, either real or personal, belonging to within-named defendant, Eri Thompson, upon which levy could be made, within the District.

Returned this 6th day of September, A. D. 1910.

H. P. SULLIVAN,
U. S. Marshal.

By J. H. D. Bouse.

Chief Office Deputy.

[Endorsed]: Plaintiff's Exhibit "A." Filed in the District Court, Territory of Alaska, Third Division. Sep. 6, 1910. Ed. M. Lakin, Clerk. By V. A. Paine, Deputy. [88]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 233.

THOMAS H. MEREDITH,

Plaintiff,

vs.

DAVE WALLACE and ERI THOMPSON,

Defendants.

Execution.

The President of the United States of America, to
the Marshal of said Division and Territory,
Greeting:

WHEREAS, Thomas H. Meredith recovered judgment against Eri Thompson in the District Court for said Division and Territory, holding terms as aforesaid, on the 25th day of April, 1910, for the sum of *Fourteen Hundred and 60/100* (1498.60) Dollars, with interest thereon at the rate of 8 per cent until paid, and costs of suit, amounting to Thirty-two and 65/100 Dollars (\$32.65);

THEREFORE, in the name of the United States of America, you are hereby commanded to levy upon, seize and take into execution the personal property of the said Eri Thompson, in your Division of said District, sufficient, subject to execution, to satisfy said judgment, interest and increased interest, costs and increased costs, and make sale thereof according to law; and if sufficient personal property cannot be found, then you are further commanded to make the amount of said judgment, interest and increased in-

terest, costs and increased costs, out of any real property not exempt by law, and make return of this writ within sixty days from the date hereof.

Herein fail not, and have you then and there this writ.

Witness the Honorable EDWARD E. CUSHMAN, Judge of said Court, and the seal of said Court hereto affixed this 1st day of July, A. D. 1910.

[Seal]

ED. M. LAKIN,
Clerk.

By Thos. S. Scott,
Deputy. [89]

Marshal's Return.

United States of America,
Territory of Alaska,
Third Division,—ss.

I hereby certify and return that I received the annexed Writ of Execution on the 1st day of July, 1910, and thereafter on the same date I served the same at Valdez, Alaska, upon Ed. M. Lakin, Clerk of the United States District Court for the Third Judicial Division, District of Alaska, by delivering to and leaving with Thos. S. Scott, Deputy Clerk for said Court, a copy of this writ certified to be such by the United States Marshal for said Third Division, District of Alaska, together with a notice of garnishment in answer to which he made the following statement:

“Valdez, Alaska, July 1, 1910.

To H. P. Sullivan, Esq.,
United States Marshal,
Valdez, Alaska.

In answer of the notice of garnishment and copy

of execution served upon me in the case of Thomas H. Meredith vs. Dave Wallace and Eri Thompson, I have to make the following report:

That I, as a private individual, have not in my possession, or under my control, any goods, credits, effects, licenses, rights, privileges or other personal property, of any kind or character whatever, belonging or payable to Eri Thompson.

That there is now deposited with me, as Clerk of the District Court for the Third Division of the District of Alaska, the sum of five hundred dollars, which was deposited by Eri Thompson and Hugh Price in payment for a liquor license, the application for which is now pending before said court, which said sum of money is held by me as such Clerk subject to the order of the above-entitled court; that said money is in the custody of the law and not subject to execution.

ED. M. LAKIN,
Clerk District Court for Territory of Alaska, Third
Division.

By Thos. S. Scott,
Deputy."

Dated at Valdez, Alaska, this 26th day of August,
1910.

H. P. SULLIVAN,
U. S. Marshal.
By J. H. D. Bouse,
Chief Office Deputy.

Marshal's costs: 1 Service, 6.00.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Aug. 26, 1910. Ed.

M. Lakin, Clerk. By Thos. S. Scott, Deputy.
Plaintiff's Exhibit "A." Cause S-9. [90]

[**Plaintiff's Exhibit "B."**]

QUITCLAIM DEED.

This Indenture, Made this 25th day of October, in the year of our Lord one thousand nine hundred and nine, BETWEEN Eri Thompsom of Susitna, Alaska, the party of the first part, and J. M. Cummings, of Valdez, Alaska, the party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quitclaim unto the said party of the second part and to his heirs and assigns the following described property situate, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain Placer Mining Claim known as the Battle Axe located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson and Price's saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon is situated.

That certain log house adjacent to John Jones' bath-house, and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first party and also that certain log cabin situated in the rear of said log house with all chattels or other property therein contained.

To Have and to Hold, all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever. [91]

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

ERI THOMPSON. [Seal]

Signed, sealed and delivered in the presence of

H. S. FARRIS.

WILLARD Y. SCOTT.

United States of America,
Territory of Alaska,—ss.

THIS IS TO CERTIFY, that on this 25th day of October, A. D. 1909, before me, H. S. Farris, a Notary Public, in and for the Territory of Alaska, duly commissioned and sworn, personally appeared Eri Thompson, to me known to be the individual described in and who executed the within instrument, and who acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set

copy of the original entry in the judgment docket, Volume 1 of the District Court, Territory of Alaska, Third Division, as the same appears on Page 260, at line 7, the same being of record in my office.

Judgment Debtor—Thompson Eri and Wallace Dave.

Judgment Creditor—Meredith Thos. H.

Case No.—233.

Principal, \$1,598.80.

Amt. of judgment Interest, 8% from date until paid.

Costs, \$32.65.

Date of entry in Journal—April 25, 1910. Volume 5, page 824.

When docketed—April 29, 1910.

In testimony whereof, I have subscribed my name and affixed the seal of the said court at Valdez, Alaska, this 29th day of April, 1910.

[Seal]

ED. M. LAKIN,

Clerk.

By Thos. S. Scott,

Deputy.

District of Alaska,

Cook Inlet Precinct and Recording District,—ss.

The within instrument was filed for record at 11:10 o'clock P. M. May 22, 1910, and duly recorded on book 111, Orders and Judgments, on page 1 of the records of said district.

[Seal]

H. S. FARRIS,

District Recorder. [94]

[Plaintiff's Exhibit "D."]

1910		DECEMBER					1910
Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.	
*	*	*	*	1	2	3	
4	5	6	7	8	9	10	
11	12	13	14	15	16	17	
18	19	20	21	22	23	24	
25	26	27	28	29	30	31	

Plff. Ex. D. S. 9.

CALENDAR.

1910.

	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.		Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	
JAN.	2	3	4	5	6	7	8	JULY.	3	4	5	6	7	8	9	
	9	10	11	12	13	14	15		10	11	12	13	14	15	16	
	16	17	18	19	20	21	22		17	18	19	20	21	22	23	
	23	24	25	26	27	28	29		24	25	26	27	28	29	30	
	30	31	..	..	..	..	..		31	..	..	..	..	..	..
FEB.	..	..	1	2	3	4	5	AUG.	..	1	2	3	4	5	6
	6	7	8	9	10	11	12		7	8	9	10	11	12	13	
	13	14	15	16	17	18	19		14	15	16	17	18	19	20	
	20	21	22	23	24	25	26		21	22	23	24	25	26	27	
	27	28	..	..	..	..	..		28	29	30	31	..	..	..
MAR.	1	2	3	4	5	SEPT.	1	2	3
	6	7	8	9	10	11	12		4	5	6	7	8	9	10	
	13	14	15	16	17	18	19		11	12	13	14	15	16	17	
	20	21	22	23	24	25	26		18	19	20	21	22	23	24	
	27	28	29	30	31	..	..		25	26	27	28	29	30	..
APRIL.	..	..	..	..	..	1	2	OCT.	..	..	..	..	..	..	1
	3	4	5	6	7	8	9		2	3	4	5	6	7	8	
	10	11	12	13	14	15	16		9	10	11	12	13	14	15	
	17	18	19	20	21	22	23		16	17	18	19	20	21	22	
	24	25	26	27	28	29	30		23	24	25	26	27	28	29	
	..	..	..	..	..	..	..		30	31	..	..	..	..	..
MAY.	1	2	3	4	5	6	7	NOV.	..	..	1	2	3	4	5
	8	9	10	11	12	13	14		6	7	8	9	10	11	12	
	15	16	17	18	19	20	21		13	14	15	16	17	18	19	
	22	23	24	25	26	27	28		20	21	22	23	24	25	26	
	29	30	31	..	..	..	..		27	28	29	30	..	..	..
	..	..	..	1	2	3	4		..	..	..	..	1	2	3
JUNE.	5	6	7	8	9	10	11	DEC.	4	5	6	7	8	9	10	
	12	13	14	15	16	17	18		11	12	13	14	15	16	17	
	19	20	21	22	23	24	25		18	19	20	21	22	23	24	
	26	27	28	29	30	..	..		25	26	27	28	29	30	31

[Plaintiff's Exhibit "E."]

This Mortgage, made the 14th day of July in the year A. D. Nineteen Hundred and Ten by Eri Thompson of Susitna, Cook Inlet Precinct, Territory of Alaska, by occupation a Retail Liquor Dealer, Mortgagor, to W. Murphy, also of said Susitna by occupation River Boatman, Mortgagee:

Witnesseth, That said Mortgagor mortgages to the said mortgagee all that certain personal property situated and described as follows, to wit:

An undivided one-half interest in and to all that certain stock of liquors and cigars now owned by Eri Thompson and Hugh Price; either in the saloon conducted by said Thompson and Price, or in transit from Seattle or other cities to Susitna. The above mentioned stock of liquors & cigars are mortgaged as security for the payment to W. Murphy the said mortgagee of the sum of Eleven Hundred (\$1100.00), with interest thereon at the rate of ——— per cent per ——— according to the terms and conditions of a certain promissory note, as follows:

Number.	Maker.	Date.	Due.	Amonnt.
One	Eri Thompson	July 14, 1910	July 14, 1911	\$1100.00

It is also agreed that if the mortgagor shall fail to make any payment, as in the said promissory note provided then the mortgagee may take possession of said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds pay the whole amount in said note specified, together with such reasonable attorneys fees as may be allowed by

the Court and all costs and expenses.

In Testimony Whereof, I, the Mortgagor herein named, have hereunto set my hand and seal the day and date first above written.

ERI THOMPSON. [Seal.]

Signed, sealed and delivered in the presence of

United States of America,
Territory of Alaska,—ss.

Eri Thompson the Mortgagor in the foregoing mortgage named, being first duly sworn, on oath deposes and says that the sforesaid mortgage is made in good faith, and without any design to hinder, delay or defraud creditors.

ERI THOMPSON.

Subscribed and sworn to before me, this 14th day of July, A. D. 1910.

[Seal N. P.]

H. S. FARRIS,

Notary Public in and for the Territory of Alaska, Residing at Susitna.

United States of America,
Territory of Alaska,—ss.

This is to certify that on this 14th day of July, A. D. 1910 before me, H. S. Farris, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Eri Thompson to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal N. P.] H. S. FARRIS,
Notary Public in and for the Ty. of Alaska, Residing
at Susitna.

Filed July 15, 1910, at 11:30 A. M. Request of Eri
Thompson.

H. S. FARRIS,
District Recorder.

United States of America,
Cook Inlet Precinct,
Territory of Alaska,—ss.

I, H. S. Farris, U. S. Commissioner and ex-officio
Recorder for the Precinct and Territory aforesaid,
hereby certify that the above and foregoing is a full,
true and correct copy of a mortgage from Eri Thomp-
son to W. Murphy, as the same appears at page 10,
Vol. 1, record of mortgages for said precinct.

Witness my hand and official seal this 5th day of
July, A. D. 1911.

[Seal] H. S. FARRIS,
U. S. Commissioner and ex-officio Recorder for Cook
Inlet Precinct, Residing at Susitna. [96]

[Plaintiff's Exhibit "F."]

*In the District Court for the Territory of Alaska,
Third Division, at Valdez.*

No. 233.

THOMAS H. MEREDITH,

Plaintiff,

vs.

DAVE WALLACE and ERI THOMPSON, Co-
partners as WALLACE & THOMPSON,

Defendants.

It appearing to the satisfaction of the Court by the proof on file herein that personal service of the summons together with a copy of the complaint certified to be plaintiff's attorney was made on the defendant Eri Thompson personally and that upon the issues joined by the pleadings herein, and this cause coming on regularly for trial on the 5th day of April, A. D., 1910, and E. E. Ritchie and J. L. Reed, appearing as counsel for the plaintiff and S. O. Morford, Esq., appearing for the defendant Eri Thompson, and trial by jury having been waived by the parties, the case was tried before the Court without a jury, whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined and the affidavit of S. O. Morford, Esq., as to what the defendant Eri Thompson would testify if present, and documentary evidence introduced by plaintiff and the evidence being closed and the Court being fully ad-

vised in the premises, now makes the following findings of fact and conclusions of law herein:

FINDINGS OF FACT.

I.

That during the times set forth in plaintiff's complaint, and on, prior to and between the 9th day of June, 1907, and the 21st day of September, 1907, the Defendants Dave Wallace and Eri Thompson were engaged in and doing business as a general co-partnership, and [97] as such did work upon and develop certain placer mining ground known as the Battle Axe Group of placer mining claims situated in Thunder Creek in Cook's Inlet Mining and Recording District, in the Third Division of the Territory of Alaska.

II.

That under a contract of employment with said co-partnership the plaintiff did work and performed services as a placer miner on the said Battle Axe Group of mining claims at an agreed compensation of \$5.00 per day and board from the 7th day of September, 1907, to and including the 21st day of September, 1907, or a period of fifteen days, and that the sum earned by plaintiff amounts to Seventy-five dollars, and that the defendants have failed, neglected and refused to pay the same.

III.

That under a contract of employment with said co-partnership Alex. McKenzie did work and performed services as a placer miner on the said Battle Axe Group of mining claims at an agreed compensation of \$5.00 per day and board from the 13th day of June,

1907, to and including the 20th day of September, 1907, for a period of eighty days, and that the sum earned by the said Alex. McKenzie amounts to Four hundred dollars of which no part has been paid except the sum of Twelve dollars, leaving a balance due and unpaid of the sum of Three hundred and eighty-eight dollars which sum the defendants have failed, neglected and refused to pay.

IV.

That on the 1st day of November, 1907, Alex. McKenzie for a valuable consideration assigned, set over and transferred said claim of \$386.00 to the plaintiff herein.

V.

That under a contract of employment with said co-partnership Andrew Beck did work and performed services as a placer miner on the said Battle Axe Group of mining claims at an agreed compensation [98] of \$5.00 per day and board from the 13th day of June, 1907, to and including the 20th day of September, 1907, or a period of eighty-eight days, and that the sum earned by the said Andrew Beck amounts to Four hundred and forty dollars of which no part was paid except the sum of \$25.00, leaving a balance due and unpaid of the sum of Four hundred and fifteen dollars, which sum the defendants have failed, neglected and refused to pay.

VI.

That on the 1st day of November, 1907, Andrew Beck for a valuable consideration assigned, set over and transferred said claim of \$415.00 to the plaintiff herein.

VII.

That under a contract of employment with said co-partnership Frank Johnson did work and performed services as a placer miner on the said Battle Axe Group of mining claims at an agreed compensation of \$5.00 per day and board on and between the 9th day of June, 1907, and the 11th day of July, 1907, or a period of twenty-nine days, and that the sum earned by the said Frank Johnson amounts to One hundred and forty-five Dollars; that under a contract of employment with said co-partnership Frank Johnson did work and performed services as a placer miner and foreman on the said Battle Axe Group of mining claims at an agreed compensation of \$6.00 per day and board from the 12th day of July, 1907, to and including the 6th day of September, 1907, or a period of forty-one days, and that the sum earned by the said Frank Johnson amounts to Two hundred and forty six dollars or a total sum of Three hundred and ninety one dollars of which no part has been paid except the sum of Twenty five dollars which sum defendants have failed, neglected and refused to pay.

VIII.

That on the 1st day of November, 1907, Frank Johnson for a valuable consideration assigned, set over and transferred said claim of \$366.00 to the plaintiff herein. [99]

IX.

That under a contract of employment with said co-partnership Al. A. Wolf did work and performed services as a placer miner on the said Battle Axe

Group of mining claims at an agreed compensation of \$5.00 per day and board from the 9th day of September, 1907, to and including the 19th day of September, 1907, or a period of nine and one-half days, and that the sum earned by the said Al. A. Wolf amounts to Forty seven and one-half dollars of which no part has been paid which sum the defendants have failed, neglected and refused to pay.

X.

That on the 30th day of September, 1907, Al. A. Wolf for a valuable consideration assigned, set-over and transferred said claim of \$47.50 to the plaintiff herein.

And the Court finds the following conclusions of law:

I.

That during the times set forth in plaintiff's complaint and on, prior to and between the 9th day of June, 1907, and the 21st day of September, 1907, the defendants Dave Wallace and Eri Thompson were engaged in and doing business as a mining partnership, in mining on the Battle Axe Group Mining claims, as mentioned in the complaint.

II.

That on the seventh day of September, 1907, a contract of employment was entered into between the plaintiff and the defendant co-partnership whereby the defendants became indebted to the plaintiff in the sum of Seventy five dollars.

III.

That on the 13th day of June, 1907, a contract of employment was entered into between Alex. Mc-

Kenzie and the defendant co-partnership whereby the defendants became indebted to the said Alex McKenzie in the sum of Three hundred and eighty-eight dollars. [100]

IV.

That on the 1st day of November, 1907, the said Alex McKenzie for a valuable consideration assigned, set-over and transferred to the plaintiff said claim of \$388.00.

V.

That on the 13th day of June, 1907, a contract of employment was entered into between Andrew Beck and the defendant co-partnership whereby the defendants became indebted to the said Andrew Beck in the sum of Four hundred and fifteen dollars.

VI.

That on the 1st day of November, 1907, the said Andrew Beck for a valuable consideration assigned, set-over and transferred to the plaintiff said claim of \$415.00.

VII.

That on the 9th day of June, 1907, a contract of employment was entered into between Frank Johnson and the defendant co-partnership whereby the defendants became indebted to the said Frank Johnson in the sum of Three hundred and sixty six dollars.

VIII.

That on the 1st day of November, 1907, the said Frank Johnson for a valuable consideration assigned, set-over and transferred to the plaintiff said claim of \$366.00.

IX.

That on the 9th day of September, 1907, a contract of employment was entered into between Al. A. Wolf and the defendant co-partnership whereby the defendants became indebted to the said Al. A. Wolf in the sum of Forty seven and one-half dollars.

X.

That on the 30th day of September, 1907, the said Al. A. Wolf for a valuable consideration assigned, set-over and transferred to the plaintiff said claim of \$47.50. [101]

XI.

That the plaintiff is entitled to recover from the defendants upon each of the above amounts or a total sum of one thousand three hundred and eight dollars and fifty cents (\$1,328.50) with interest thereon at the rate of 8 per centum per annum from the 21st day of September, 1907.

Dated this 25th day of April, 1910.

PETER D. OVERFIELD,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 25, 1910. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. Entered Court Journal No. 5, page No. 821. Plaintiff's Exhibit "F," Cause S. 9. [102]

[Defendants' Exhibit No. 1.]

QUITCLAIM DEED.

This Indenture, Made this 25th day of October, in the year of our Lord one thousand nine hundred and nine, Between Eri Thompson, of Susitna, Alaska,

the party of the first part, and J. M. Cummings, of Valdez, Alaska, the party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of ONE (\$1.00) DOLLAR, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise release and forever quit-claim unto the said party of the second part and to his heirs and assigns the following described property, situate, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

Placer Mining Claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson and Prices' saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon is situated.

That certain log house adjacent to John Jones' bath-house, and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first party; and also that certain log cabin situated in the rear of said log house, with all chattels or other property therein contained."

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

ERI THOMPSON. [Seal]

Signed, sealed and delivered in the presence of,

H. S. FARRIS.

WILLARD Y. SCOTT.

United States of America,
Territory of Alaska,—ss.

This is to certify, that on the 25th day of October, A. D. 1909, before me, H. S. Farris, a Notary Public, in and for the Territory of Alaska, duly commissioned and sworn, personally appeared Eri Thompson, to me known to be the individual described in and who executed the within instrument, and who acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

H. S. FARRIS,

Notary Public, in and for Alaska, Residing at Suitsna, Alaska.

District of Alaska,
Cook Inlet Precinct, and Recording District,—ss.

The within instrument was filed for record at 8:30 o'clock P. M. May 22, 1910, and duly recorded on

book 11 Deeds on page 424 of the records of said district.

[Seal]

H. S. FARRIS,
District Recorder. [103]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS, Co-
partners,

Defendants.

**Motion for Order Requiring J. L. Reed, as the Real
Party in Interest, to be Substituted in Place of
Plaintiff.**

Now comes J. M. Cummings, one of the defendants in this action, and moves the Court for an order requiring J. L. Reed to be substituted as the plaintiff in this action in the place of Thomas H. Meredith, the plaintiff of record herein, upon the ground that said J. L. Reed has become and now is, by force of an assignment, dated January 12, 1912, of the judgment mentioned in the amended complaint herein and which judgment this action is brought to enforce against property of this defendant Cummings, the owner of said judgment, and is therefore the real and sole party in interest in the prosecution of this action.

This motion is based on said assignment, of

record in this court in cause No. 233, on a notice of said assignment served on February 23, 1912, and a copy whereof is hereto attached, and on all the files, records and proceedings in this action.

Dated March 14, 1912.

S. O. MORFORD, and
THOMAS R. SHEPARD,
Attorneys for Defendant Cummings.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 16, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [104]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 233.

THOMAS H. MEREDITH,

Plaintiff,

vs.

DAVE WALLACE and ERI THOMPSON, Copart-
ners,

Defendants.

Notice of Assignment of Judgment.

To Eri Thompson, Defendant, and S. O. Morford,
His Attorney:

You are hereby notified that the judgment recovered in this action by the plaintiff, Thomas H. Meredith, against the defendant, Eri Thompson, was duly assigned to J. L. Reed, by an assignment in writing dated January 12, 1912, which said assignment has this day been filed in the office of the

clerk of the above-named court, as a part of the files and court record of the above-entitled and numbered cause.

Dated at Seward, Alaska, this 23d day of February, 1912.

J. L. REED and
E. E. RITCHIE,
Attorneys for Plaintiff.
J. L. REED,
Assignee.

Service of a copy of the foregoing notice acknowledged this 23d day of February, 1912.

S. O. MORFORD,
Attorney for Defendant, Eri Thompson. [105]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS, Copart-
ners,

Defendants.

**Order Substituting J. L. Reed in Place of the
Plaintiff.**

The motion of the defendant J. M. Cummings, in this action for an order requiring J. L. Reed to be substituted as the plaintiff herein in the place of Thomas H. Meredith having come on to be heard before this court on the 23d day of March, 1912,

and having been argued by counsel for the plaintiff and the defendant Cummings respectively, and it appearing to the Court from the files and records herein that said J. L. Reed, by force of an assignment by said Meredith to him, dated Jany. 12, 1912, of the judgment mentioned in the amended complaint herein and which this action is brought to enforce against the defendant Cummings, is the owner of said judgment and is therefore the real party in interest in the prosecution of this action—and the Court being fully advised in the premises;

It is ordered, by the Court now here, that said J. L. Reed be and he hereby is substituted and do henceforth stand as the plaintiff in this action, in the place of Thomas H. Meredith, and that the title of this action henceforth do stand amended accordingly.

Let this order be entered and filed *nunc pro tunc* as of the 23d day of March, 1912.

Dated April 6, 1912.

EDWARD E. CUSHMAN,

District Judge.

Entered Court Journal No. 6, page No. 696.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 6, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [106]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

THOMAS H. MEREDITH,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Decision.

This is a cause tried to the Court without a jury, brought to set aside a deed alleged to be made by the defendant Thompson to the defendant Cummings in fraud of the former's creditors, to subject the property therein named to the lien of a judgment obtained by the plaintiff Meredith against Thompson and another, for an injunction and general equitable relief.

The complaint states that the plaintiff obtained in April, 1910, such judgment in this Court for \$1,598.60; that an execution and *alias* execution have been issued thereon but both returned unsatisfied and no property found; that on May 22, 1910, a deed from Thompson to Cummings of certain real and chattel property was filed with the recorder of Cook's Inlet Precinct, the property being described as a placer mining claim called the Battle Ax, certain log buildings and the lot of ground on which one stood and a one-half interest in a saloon; that the deed was not made in good faith or for a valid consideration but was the result of a conspiracy be-

tween defendants and made with the intention of placing Thompson's property beyond the reach of his creditors and to hinder, delay and defraud the plaintiff in the collection of his judgment. That the defendant Cummings never took possession of the property, but that the same has remained at all times since in the custody and control of the defendant Thompson. That plaintiff's judgment was obtained against defendant Thompson and one Dave [107] Wallace, as copartners; that Wallace left the territory in 1907 to defraud plaintiff in the collection of his claim; that he has not returned, has no property in the territory and is insolvent; that in 1910 Thompson mortgaged certain of the personal property to one Murphy; that the mortgage and deed were made for the purpose of hindering, delaying and defrauding plaintiff in the collection of his judgment; that by them all of Thompson's property, real and personal, was transferred; that defendant Thompson is insolvent and neither Thompson nor Wallace has property, real or personal, individual or partnership, other than that conveyed by the deed.

Defendants have answered separately. The answer of the defendant Cummings admits the judgment, the issuance and return of executions; alleges the purchase by him from the defendant Thompson of the property in dispute; that in February, 1910, he sold back to Thompson the saloon stock and rented to him the saloon buildings; denies that any other of the property has ever since the sale been in Thompson's possession; denies all fraud in the sale and alleges its purchase by him for \$1,500.

The answer of the defendant Thompson is substantially the same as that of Cummings, alleging his (Thompson's) possession of the saloon stock from February, 1910, to May, 1911; that the mortgaging of it by him was in good faith and that the mortgage has been paid.

The affirmative matter of the answer is put in issue by the reply.

The evidence establishes the following facts: In December, 1907, the plaintiff began an action in court against the defendant Thompson and Dave Wallace to recover \$1,328.50; that the latter left the territory about that time and has not returned. There is no evidence that he had or left property in the territory of any kind. Cummings testifies that he and Thompson were partners in 1903 and 1904; that they had known each other for seventeen or eighteen years; that in August, 1907, he (Cummings) sold Thompson a one-half interest in a [108] saloon at Katalla for \$2,000, one-half cash; that he took Thompson's note for the other thousand dollars, due in one year, without interest. It is shown that in 1909 Cummings was residing at Seward, Alaska, and Thompson at Susitna Station, Alaska, where the property involved in this suit, other than the mining claim, is situated. The mining claim is some one hundred miles from Susitna Station, which latter place is over one hundred miles from Seward. That in October, 1909, Cummings had never seen any of this property; that in that month both defendants were at Valdez, Alaska, where court was then in session, some 250 miles from Susitna

Station, Cummings as a member of the grand jury and Thompson awaiting an expected trial of the suit brought by plaintiff against him and Wallace. Both defendants testified that at this time—October, 1909—Thompson executed to Cummings the deed attacked in the present suit; that Cummings knew of the then pending suit against Thompson; that he understood at the time that Thompson intended to permanently leave Alaska; that he was going into British Columbia, where he would attempt to secure some business and remain. It is shown that the deed included all the property then owned by Thompson in this territory. Defendants testify that the consideration for the deed was the surrender of Thompson's note for \$1,000 and \$500 in cash. The note was then over a year past due; Cummings had never asked for its payment; there was no check or other documentary evidence of the \$500 cash payment or that Cummings had withdrawn from his bank account prior to that date such or a greater amount.

The evidence of the value of the property conveyed is not satisfactory; that the property other than the mining claim was probably worth about \$1,500; the mining claim had a purely speculative value impossible to fix.

The deed was drawn and acknowledged before Mr. Farris, then commissioner and recorder at Susitna Station. Mr. Farris does not remember that the deed was delivered to Cummings at the time of its [109] execution. Cummings returned to Seward, leaving Thompson at Valdez. Afterwards Thomp-

son went outside, either to British Columbia or the states. Cummings remained at Seward during the winter of 1909-10; he did not take possession of any of the property nor visit it, altho he says he heard bad reports about the way the saloon business was being run and that his idea in buying was to get into business. This saloon was then being conducted by Thompson's former partner Price. Cummings did not know Price, never had any accounting with him; says he wrote him once that he would go into Susitna Station in the spring. The saloon was being run under the old name of Thompson & Price and under the license to them.

Thompson returned to Susitna Station by way of Seward in February, 1910. Defendants testify that while at Seward on his return he bought back from Cummings the one-half interest in the saloon business for \$400 cash and rented the saloon building for \$20 per month. No documentary evidence of this transaction is produced.

It has been claimed that the rent has been paid since to September, 1911, by Thompson and his successor in the saloon to Cummings; there is no documentary evidence of any of these payments. Defendants claim that the money was remitted from Susitna to Seward in cash, generally by letter but never registered and never by check or postoffice order.

Thompson returned to Susitna in February, 1910, where he is still sustaining the same apparent relations to the property there as before. Cummings in April, 1910, went to Knik, which is about thirty-

five miles from Susitna. At Knik he got employment tending bar and his wife running a roadhouse for his employer; he did not visit Susitna until 1911, when he was there for one day; he has never visited the mining claim.

April 25, 1910, plaintiff recovered judgment for \$1,598.60 in his suit against Thompson and Wallace and forwarded the transcript of the judgment for docketing to the recorder Farris at Susitna Station, [110] where it arrived by mail May 22, 1910, and was filed and recorded at 11:10 P. M. May 22d in that year was Sunday. At 8:30 P. M. of the same day the deed from Thompson to Cummings was also filed for record, Thompson delivering it to the recorder for that purpose. Cummings testified that the deed was at all times in his possession, from its execution until about May 18th, when, at Knik, he gave it to a man named Beede, who was going to Susitna Station, with instructions to give it to the recorder. Thompson testified that Beede delivered it to him (Thompson) with the request that he have it recorded for Cummings. Beede was dead at the time of the trial. Thompson testifies that he retained possession as owner of the one-half of the saloon business from the time he purchased it back from Cummings until October, 1910, when he sold it, during which time he gave the mortgage to Murphy for \$1,100.

This suit to set aside the transfer to Cummings was brought in October, 1910.

Cummings testifies that the placer claim was worked on a three-year lease given by him in June,

1910, for 25% royalty. There is no evidence that Cummings had any representative at any time upon the ground to look after his interest in the "clean-up" or at any other time. The evidence shows that the defendant Thompson visited the claim at a time when there was trouble with other claim owners over the water used on the placer.

J. L. REED, Esq., and
E. E. RITCHIE, Esq.,
Attorneys for Plaintiff.

S. O. MORFORD, Esq., and
THOMAS R. SHEPARD, Esq.,
Attorneys for Defendants.

Authorities cited by plaintiff:

20 Cyc. 750, 751, 491, 344, 345, 440, 244, 442,
444, 447, 448, 449, 450, 541, 451, 543, and
cases cited at the various pages mentioned.
Sections 96 & 98, Part 5, Carter's Codes. [111]
Crossley et al. v. Champion Mng. Co., 1 Alaska,
391.

Authorities cited by defendants:

Sections 130, 133 and 134, Part 5, and Section
1043, Part 4, Carter's Codes.
Rule v. Bolles, 27 Oregon, 368.
Jones on Evidence, 2nd Ed., 233.
Crawford v. Neal, 144 U. S. 596, 36 Law Ed. 556.
Johnson v. McGrew, 11 Iowa, 151, 77 Am. Dec.
137.
Bamberger, Bloom & Co. v. Schoolfield et al.,
106 U. S. 149, 40 Law Ed. 374.
Shelly v. Booth, 39 Amer. Dec. 481.
Ruhl v. Phillops, 48 N. Y. 125, 8 Amer. R. 522.

Arnett v. Coffey, 1 Colo. App. 34, 27 Pac. 614.

Ziska v. Ziska, 23 L. R. A. 28.

Wells v. Dalrymple, Fed. Cases No. 17392.

Smith v. Ingles, 2 Ore. 43.

In re Estes, 3 Fed. 134.

Miller v. Sherry, 69 U. S. 237, 17 Law Ed. 827.

Jones v. Simpson, 116 U. S. 610, 29 Law Ed. 742.

Prewit v. Wilson, 103 U. S. 24, 26 Law Ed. 363.

Wheaton v. Sexton's Lessee, 4 Wheaton, 502, 4
Law Ed. 627.

Jenkins v. Einstein, 3 Bliss, 128.

Gaylord v. Kelshaw, 17 Law Ed. 613.

Astor v. Wells, 4 Wheaton, 466, 4 Law Ed. 616.

Coolidge et al. v. Heneky et al., 11 Ore. 327.

Stearns v. Gage, 79 N. Y. 102.

Parker v. Connor, 93 N. Y. 118.

Stewart v. English, 6 Ind. 176.

14 Enc. Law 291 and cases cited.

Sections 260 and 262, Part 4, Carter's Codes, provide:

“Sec. 260. Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, while an execution might issue upon such judgment, and the same remains unsatisfied in whole or in part, the plaintiff, or in case of his death his representative, may file a certified transcript of the original docket in the office of the recorder of any recording district that may have been established in said district in accordance with law. Upon the filing of such transcript the recorder shall docket the

same in the judgment docket in his office. From the day of docketing a judgment as in this chapter provided, or the transcript thereof, such judgment shall be a lien upon all the real property of the defendant within the recording district or districts where the same is docketed, or which he may afterwards acquire therein, during the time an execution may issue thereon."

"Sec. 262. A conveyance of real property or any portion thereof or interest therein shall be void against the lien of a judgment unless such conveyance be recorded at the time of docketing such judgment or the transcript thereof, as the case may be."

Chapter 14, Part 4, of this code provides for the attachment of real property at the time of commencing suit or afterwards. Section 140 prescribes the method of levy and section 142 provides that in order to preserve the lien of the levy the [112] marshal's certificate of the levy must be filed with the recorder within ten days from the attachment.

Section 274 regulates the enforcement of execution upon a judgment, subdivision 4 of that section providing:

"Fourth. Property shall be levied on in like manner and with like effect as similar property is attached, as provided in sections 140, 141 and 143, omitting the filing of the certificate provided for in section 142."

Section 1043 provided:

"Sec. 1043. Every sale or assignment of per-

sonal property, unless accompanied by the immediate delivery and the actual and continued change of possession of the thing sold or assigned, shall be presumed prima facie to be a fraud against the creditors of the vendor or assignor, and subsequent purchasers in good faith and for a valuable consideration, during the time such property remains in the possession of said vendor or assignor."

Sections 96, 98 and 130, Part 5, provide:

"Sec. 96. The commissioner shall certify upon each conveyance recorded by him the time when it was received and the reference to the book and the page where it is recorded, and every conveyance shall be considered as recorded at the time it was so received."

"Sec. 98. Every conveyance of real property within the district hereafter made which shall not be filed for record as provided in this chapter shall be void against any subsequent innocent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance shall be first duly recorded."

"Sec. 130. Every conveyance or assignment in writing or otherwise of any estate or interest in lands, or in goods, or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits,

damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded, shall be void."

The questions argued by counsel have gone to the *bona fides* of the sale from Thompson to Cummings and the right of the plaintiff to maintain the suit in any event.

While under section 1043, *supra*, the fraud presumed from want of change in possession is confined to personal property, yet in this case where both real and personal property was transferred [113] by one instrument, which property constituted the entire estate of the debtor and there was no actual change of possession of any of the property until long subsequent, this taken in connection with the various circumstances above pointed out is sufficient to shift the burden of evidence as to the *bona fides* of the sale from the plaintiff to the defendants. Many circumstances may be mentioned of the class ordinarily denominated badges of fraud.

Close and intimate relations existing between the parties to the transaction claimed to be fraudulent.

Suit pending against the grantor approximately for an amount equal to the value of the property.

Insolvency of the grantor—the value of all his property was at the time of transfer about \$1,500; his debts known to grantee other than that involved in the pending suit amounted to \$2,800.

Unusual delay in recording conveyance.

A sale of all his property of mixed character to one grantee.

That at the time of purchase the property was unknown to the grantee.

That it was bought without an attempt to examine or request by the grantee for time to examine.

That grantee did not take possession, but that the grantor continued in possession and continued to show interest in and care for the property after the transfer.

That the grantee did not exhibit ordinary interest in or attention to it after the transfer.

That the instrument of transfer was left with or delivered to the grantor.

That it was hurriedly recorded by the grantor at an unusual time, to wit, 8:30 Sunday night.

That no vouchers or documentary evidence of any kind to support the transaction are introduced or offered.

That so few of the acts of the parties to the transaction were done in the ordinary manner.

That without an examination of the property the grantee sold back to the grantor the saloon for \$400, which grantor was immediately able to mortgage for \$1,100.

It is believed that these with other unusual circumstances warrant the conclusion that the transfer was made to Cummings to hinder, delay and defraud Thompson's creditor, the plaintiff; [114] that Cummings knew of the fraudulent purpose and was a party to it. He admits that immediately prior to the transfer he knew that defendant Thomp-

son intended leaving the territory permanently. He was acquiring all of Thompson's property and he knew Thompson owed twice as much as it was worth, outside of the claim on which suit was pending. It is no answer to say that he did not think there would be a recovery in that suit.

Besides this admitted knowledge prior to the transfer on his part, many of the circumstances mentioned above are of a character to disclose the prior purpose. Defendants have undertaken to explain many of the unusual circumstances, but their number is too great and the explanations do not satisfy.

It is concluded that there was no valuable consideration for the transfer.

It is argued by defendants that plaintiff cannot recover because he had not brought himself into such privity with the property as to entitle him to sue to set aside the transfer, no matter how fraudulent it might be.

Defendants are right to this extent—under our law there is no lien upon personal property until the actual levy of the writ of attachment or execution, which must be by taking into custody from which time the attaching plaintiff is deemed a purchaser in good faith for value.

Sections 140 and 141, Part 4, Carter's Codes.

This lien he must have before he can maintain a suit to void the transfer.

“And since a judgment does not operate as a lien upon personalty, if the creditor seeks aid in regard to the personal estate of the debtor he

must show not only a judgment but also an execution giving him a legal preference or lien upon the debtor's goods and chattels."

20 Cyc., p. 696, and citations, note 15.

Under the Alaskan code a judgment is made a general lien by statute upon all of the defendant's real estate and a levy is [115] not necessary to create a lien.

Sec. 260, Part 4, Carter's Codes, *supra*.

"Under the statutes of many of the states the lien of a judgment attaches to the real estate of a debtor when the judgment or a transcript of it is recorded or filed in the proper office of the county where the land is situated. Where this is the case a creditor may file his bill to set aside a fraudulent conveyance as soon as he has obtained a judgment without issuing execution thereon, if the action is brought for the purpose of making his lien more available and efficient and in aid of an execution thereafter to be issued."

20 Cyc., page 697.

"Where a creditor is required to cause execution to be issued upon his judgment before suing to set aside the conveyance, whether he must cause the execution to be actually levied upon the subject of the conveyance will usually be found to depend upon whether a levy is necessary to create a lien. In some states the statute provides that a levy must be made to preserve the lien of the judgment if the prop-

erty sought to be reached is capable of being levied on. But where a specific lien upon the real estate of the debtor has been acquired by the filing of a judgment or the issuance of execution thereon and the action is brought in aid of the lien, a levy of the execution is not required. And a levy is not necessary if it would be of no practical utility."

20 Cyc., page 698.

Subdivision 4 of Section 274, Part 4, Carter's Codes, provides:

"Property (real) shall be levied on (by execution after judgment) in like manner and with like effect as similar property is attached as provided in Sections 140, 141 and 143, *omitting the filing of the certificate provided for in Section 142.*"

From the above quotation, by comparing its provisions with sections 140 and 141, *supra*, it is apparent that a levy after judgment is not necessary or contemplated for the preservation of the judgment lien.

"When the debtor has clouded the title to real property by an encumbrance or fraudulent transfer of it, the judgment creditor may proceed at once to have it removed. He obtains a lien upon the land when he recovers his judgment, and he has the right to stop there and proceed to have the title freed from its obscurity. The suit in that case is to aid his remedy at law, and he is not required even to issue an execution. (3 Pomeroy's Eq. Jur., sec.

1415, note 4; *Mohawk Bank v. Atwater*, 2 Paige, 54; *Parshall v. Tillou*, 13 How. Pr. 7.)”

Multnomah Street Ry. Co. v. Harris, 13 Ore. 198, at 200.

“Counsel for defendant insist that plaintiffs have no standing in equity without first bringing themselves in privity with the property sought to be reached by this suit by attachment or judgment lien, but we think the authorities he cites in support of his position are inapplicable here. * * * In *Fleischner v. Bank of McMinnville*, 35 Ore. 553, at 562 (60 Pac. 603), Mr. Justice [116] Bean cites this case (*Dawson v. Coffey*, 12 Ore. 513, at 519, 8 Pac. 838), with approval in support of the statement: ‘It is settled that before a creditor can maintain a bill to set aside the fraudulent conveyances of his debtor he must either establish his claim by judgment, or acquire a lien by attachment.’ See, also, numerous Oregon cases cited. Therefore plaintiffs have done all the law requires of them and all that they could do by reducing their claims to judgment and having executions returned *nulla bona*.”

Williams v. Commercial Nat. Bk., 49 Ore. 492, at 501 and 2.

“The filing of the transcript of the judgment in La Plata county fastened a lien securing its payment upon the interests of the coal and coke company in its real estate in that county, under the statutes of Colorado. * * * The argument that this lien was insufficient upon which

to base a suit in equity to remove the fraudulent trust deed, because it was a general lien created under the statutes, and not a specific lien fixed by the levy of an execution, finds no support in the authorities, and fails to appeal to the reason with persuasive force. * * * In the case at bar all the property which the judgment debtor has is real estate in La Plata county. The judgment is a lien upon all this property. The levy of an execution upon it could not make this lien more specific or more efficient, and the conclusion is irresistible that the general lien upon real estate created by entering a judgment or filing a transcript of it in the county where the lands of the debtor are situated, in accordance with the statutes which provide therefor, is sufficient basis for the maintenance of a suit in equity to remove a fraudulent obstruction to the enforcement of that lien. Bump Fraud. Conv. 535; Black Judgm., sec. 400."

Schofield v. Ute Coal & Coke Co., 92 Fed. 269, at 271 and 2.

"The judgments involved here are made liens by statute. They would not have been made more binding by the issuance of an execution on each of the several judgments. The defendant in judgment owned no property in his own name subject to execution. The property on which the lien was fixed by the judgments was held, it is alleged, in secret trust for the judgment defendant. The corporation that so held it had, according to the averments of the bill, been chartered

to be used as a cloak to defraud the plaintiffs. The property, with its title so incumbered, would not sell under execution for nearly its value. On these facts we hold that equity has jurisdiction without the issuance of executions on the judgments. *Schofield v. Coke Co.*, 34 C. C. A. 34, 92 Federal, 269; *McCalmont v. Lawrence*, 1 Blatchford, 232, Fed. Cases No. 8676; *Case v. Beauregard*, 101 U. S. 688, 25 L. Ed. 1004."

Lazarus Jewelry Co. v. Steinhardt, 112 Fed. 614, at 618 and 19.

The following cases cited by the defendant are inapplicable.

In *Arnett v. Coffey*, 1 Colo. App. 34, 27 Pac. 614, the judgment creditor had failed to acquire his lien by filing a transcript of it with the recorder.

In *Smith v. Ingles*, 2 Ore. 43, the judgment debtor paid the purchase money to buy land and took the title in his son's name. This equitable interest was held not subject to the lien of a [117] judgment because the title never had been in the judgment debtor. The title once being in him a void transfer will not remove it from the grasp and hold of the judgment creditor's lien and equity where only parties to the fraud are before the Court.

That this was the effect of the Court's ruling in that case is shown by the decision of the same Court referring thereto in *Holmes v. Wolfard*, 47 Ore. 93, at 100.

The defendant also cites *In re Estes*, 3 Fed. 134. In this case it was held that in Oregon a judgment would be no lien on property theretofore fraudu-

lently conveyed. There were other parties equitably interested before the Court in that case than the judgment debtor and the parties to the fraud. The suit there did not involve the right of such a judgment debtor to maintain a suit to void the transfer. The ruling was made on the authority of *Miller v. Sherry*, 69 U. S. 237. In the latter case it was not contended that the judgment was a lien, and it was held that the filing of the judgment creditor's bill itself constituted an equitable levy.

It will be seen that these cases are not directly in point and that they are not recent.

“A strong purpose is manifested in the more recent statutes and decisions of the Courts to enlarge and strengthen the creditor's remedies against the property of the debtor.”

20 Cyc. 341 and 655 *et seq.*

It is argued by the defendants that as the complaint alleges the ownership of the property and its possession at all times by the defendant Thompson, that therefore there was an adequate remedy at law and this suit will not lie. This position does not satisfy the conscience. Thompson had executed and recorded a deed purporting to convey all his property and had mortgaged a part of it. There was no executed or recorded reconveyance to him of the saloon business. The mortgage thereon was [118] for more than the property was worth, and altho he says now that it has been paid, no record or knowledge on plaintiff's part of that fact is shown. Thompson was still claiming to rent the saloon building from Cummings. The plaintiff was not under

these circumstances compelled to court lawsuits with the grantee and mortgagee of Thompson by levies and sales before bringing a suit to set aside the fraudulent conveyances.

It is therefore concluded that this suit will lie and plaintiff prevail, so far as the property fraudulently transferred may be considered real property and that he must fail so far as it is personal, for want of a lien thereon before bringing suit and because parties not before the Court are shown to have acquired it.

The pleadings and the deed offered in evidence by the defendants describe the property as—

“That certain Placer Mining Claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson and Prices' saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon is situated.

That certain log house adjacent to John Jones' bath-house, and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first party; and also that certain log cabin situated in the rear of said log house, with all chattels or other property therein contained.”

The foregoing is all that is shown as to the character of title or property. That which in the con-

veyance defendants have treated as real estate, the mining claim, the saloon building and lot, will be held to be so, and that which is treated as personal property, that is, the saloon, stock, cigar business, license, the log house adjacent to the bath-house, together with the chattels therein and the log cabin situated in the rear will be held to be so.

If these two buildings were upon public land, which in the absence of all evidence will be presumed, there would be an [119] implied license to remove and they would be personal property.

The prayer of the plaintiff in his amended complaint is granted except as to this personal property.

Done in open court this 27th day of April, 1911.

EDWARD E. CUSHMAN,

District Judge.

Entered Court Journal No. 6, page No. 757-766.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 27, 1912. Ed. M. Lakin, Clerk. [120]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Findings of Fact and Conclusions of Law.

It appearing to the satisfaction of the Court by the proofs on file herein that personal service of the summons herein, together with a copy of complaint and amended complaint certified to by plaintiff's attorney, was made on the defendants Eri Thompspon and J. M. Cummings, and that upon the issues joined by the pleadings herein and this cause coming on regularly for trial on the 17th day of February, A. D. 1912, and E. E. Ritchie and J. L. Reed appearing as counsel for the plaintiff and S. O. Morford, Esq., appearing for the defendants, the case was tried before the Court, whereupon documentary evidence and the depositions duly taken upon interrogatories of H. S. Farris and Hugh Price were introduced in evidence by the plaintiff and the affidavit of S. O. Morford, Esq., as to what the defendant Eri Thompson would testify if present, and J. M. Cummings being duly sworn and examined on behalf of defendants and Al. Wolf and Arthur Meloche being duly sworn and examined in rebuttal on behalf of plaintiff, and the evidence being closed and arguments of counsel heard, and the Court, being fully advised in the premises, now makes the following findings of fact and conclusions of law herein:

FINDINGS OF FACT.**I.**

That Thos. H. Meredith the plaintiff's assignor on the 25th day of April, 1910, recovered judgment in this court against Dave Wallace and Eri Thompson,

copartners, jointly and severally, in the sum of [121] One Thousand Five Hundred and Ninety-eight Dollars and Eighty Cents (\$1,589.80), with interest thereon at the rate of eight per cent per annum from date until paid, and costs amounting to Thirty-two and 65/100 Dollars (\$32.65), and that said judgment with costs and accruing costs is wholly unpaid and in full force and effect. That said judgment was granted in action No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners, as Wallace and Thompson, and the same was entered on the 25th day of April, 1910, and docketed by the clerk in the judgment docket, on the 29th day of April, 1910.

II.

That Thomas H. Meredith, the plaintiff's assignor, caused to be filed and docketed in the judgment docket a certified copy of the original docket of said judgment in cause No. 233, in the office of the recorder of Cook Inlet Recording District, District of Alaska, at 11:10 o'clock P. M., May 22, 1910, in Book 3, Orders and Judgments, page 1 of the records of said District.

III.

That Thomas H. Meredith, plaintiff's assignor, on the first day of July, 1910, caused to be issued an execution out of this court in action No. 233, and pursuant to said judgment which was thereafter duly returned by the United States Marshal of this Division wholly unsatisfied, on the 26th day of August, 1910; and thereafter, on the 22d day of September, 1910, an *alias* execution was duly issued out of said

court pursuant to said judgment, directed to the United States Marshal of the Third Division of Alaska, to levy upon, seize and take into execution personal property of Eri Thompson in said Third Division sufficient to satisfy said judgment and costs, and if sufficient personal property could not be found in said Division to satisfy said judgment, then and in that case to make the amount thereof out of the real property belonging to said defendant in said Division, not exempt from execution; and that said *alias* execution was in due course [122] thereafter returned into the clerk's office of this Court wholly unsatisfied, said return alleging that no property of said Eri Thompson could be found in said Division subject to execution and levy.

IV.

That Dave Wallace departed from the Territory of Alaska on or about the month of October, 1907, and that he has not returned to the said Territory since said date. That Dave Wallace has no property, real or personal, in the Territory of Alaska out of which plaintiff could satisfy his judgment.

V.

That on the 25th day of October, 1909, the defendant Eri Thompson executed a conveyance, in form a quitclaim deed, to the defendant, J. M. Cummings, purporting to convey to J. M. Cummings the following described property, situate, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson and Price's saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon is situated.

That certain log house adjacent to John Jones' bath-house, and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first party; and also that certain log cabin situated in the rear of said log house, with all chattels or other property therein contained.

And caused said conveyance to be filed for record in the office of the Recorder at Susitna in Cook Inlet Recording District, District of Alaska, at 8:30 o'clock P. M., May 22d, in Book 3 of Deeds, page 424. [123]

VI.

That said conveyance conveyed all of the property, real and personal, of the defendant Eri Thompson in the Territory of Alaska out of which plaintiff could satisfy his judgment herein, and was made with intent to defraud the creditors of the said Eri Thompson.

CONCLUSIONS OF LAW.

I.

That Dave Wallace departed from the Territory of Alaska with intent to defraud and defeat plaintiff in the collection of his judgment in cause No. 233, and with intent of hindering, delaying and defrauding Thomas H. Meredith, plaintiff's assignor, in the collection of the same, and that the said Dave Wallace is insolvent.

II.

That on the 12th day of January, 1912, Thomas H. Meredith assigned, set-over and transferred to J. L. Reed, the plaintiff herein, all his interest in the judgment in cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners as Wallace and Thompson, for a valuable consideration.

III.

That the conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings conveyed all the property, real and personal, of the defendant Eri Thompson, and was made with the intent to hinder, delay and defraud the creditors of Eri Thompson, and for which there was no valuable consideration, and that said conveyance is null and void, against plaintiff's judgment in cause No. 233 entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners, as Wallace and Thompson, and is null and void as against plaintiff in this action.

IV.

That the said Eri Thompson is insolvent. [124]

V.

That the plaintiff has a lien against the real property belonging to the defendant Eri Thompson described in the conveyance executed by Eri Thompson to J. M. Cummings, dated the 25th day of October, 1909, described as follows, situate, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain Placer Mining Claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson and Price's saloon and the lot or parcel of land whereon said saloon is situated.

—as of and from the time of the filing and docketing in the judgment docket a certified copy of the original docket of the judgment in cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners, as Wallace and Thompson, in the office of the Recorder of the Cook Inlet Recording District, District of Alaska, to wit, at 11:10 o'clock P. M., May 22d, 1910, and that said lien is superior to and unaffected by the said conveyance between Eri Thompson and J. M. Cummings and the filing and recording of same in the office of the recorder at Susitna, Cook Inlet Record-

ing District, District of Alaska.

Done in open court this 4th day of May, 1912.

EDWARD E. CUSHMAN,

District Judge.

Entered Court Journal No. 6, page No. 781.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 4, 1912. Ed M. Lakin, Clerk. By Thos. S. Scott, Deputy. [125]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Judgment.

This cause came on for hearing on the 17th day of February, A. D. 1912, and was heard upon the amended complaint, answers, reply, exhibits, depositions, affidavit, proof in the cause and arguments of counsel and the cause was submitted to the Court for consideration and decision, and after deliberation thereon and the Court having rendered its decision therein, files its findings of fact and conclusions of law in writing.

Wherefore, it is by the Court ordered, adjudged and decreed that the conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M.

Cummings purporting to convey to J. M. Cummings the following described property, situate, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson and Price's saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon is situated.

That certain log house adjacent to John Jones' bath-house and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first party; and also that certain log cabin [126] situated in the rear of said log house, with all chattels or other property therein contained.

—was made with intent to hinder, delay and defraud the creditors of the said Eri Thompson, and is void as against plaintiff's judgment rendered in cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners, as Wallace and Thompson and as against plaintiff in this action.

It is further ordered, adjudged and decreed that plaintiff be and is hereby declared and adjudged to

have a valid lien under his judgment given and entered in cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, co-partners as Wallace and Thompson, and in this action upon the real property described in said purported conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings, described as follows, to wit, situated, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon building situated in the town of Susitna, Alaska, known as Thompson and Price's saloon; and the lot or parcel of land whereon said saloon building is situated.

And that said lien commences and dates from the 22d day of May, 1910, and it is hereby adjudged that the said described real property be and is subject to plaintiff's lien, and that the filing and recording of said purported conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings, is hereby cancelled, vacated and set aside in so far as the same conflicts with plaintiff's judgment or rights thereunder or plaintiff's lien. [127]

And it is further ordered, adjudged and decreed that the plaintiff in this action is at liberty to proceed upon his executions heretofore issued upon the

judgment in cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners as Wallace and Thompson, or to issue another execution and combine in one execution the principal, and interest and attorney fees and costs of suits and expenses of sale and disbursements in cause No. 233 and in this action, as he may be advised; and should plaintiff so elect to proceed under one execution, he shall after deducting the expenses of sale, costs, disbursements and attorney fee of this action, apply the surplus to the satisfaction of his judgment in cause No. 233.

Judgment is also rendered against defendant Eri Thompson and J. M. Cummings for the costs and accruing costs and disbursements of this action, taxed at \$86.60, for which an execution will issue.

Done in open court this 4th day of May, 1912.

EDWARD E. CUSHMAN,

District Judge.

Entered Court Journal No. 6, page No. 784.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 4, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [128]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

**Petition for Allowance of Appeal, and Assignment
of Errors.**

To the Hon. EDWARD E. CUSHMAN, District
Judge Presiding in the Above-named Court:—

Now come Eri Thompson and J. M. Cummings, the defendants in the above-entitled cause, and, feeling themselves aggrieved by the proceedings had therein in the above-named district court, and by the judgment rendered and entered therein by said court on the fourth day of May, 1912, decreeing to the plaintiff in said cause certain relief of an equitable nature against said defendants as therein fully set forth, and further rendering judgment in said plaintiff's favor against said defendants for costs taxed at the sum of \$86.60, hereby appeal from said judgment and decree to the United States Circuit Court of Appeals for the Ninth District, and they humbly petition the above-named District Court for an order allowing their said appeal and fixing the amount of security for the costs of said appeal to be given by said appellants thereon, and also fixing the amount of a separate bond to be given by them thereon in order to supersede the effect and enforcement of said judgment appealed from pending the hearing and determination of said appeal.

And said defendants and appellants specify the following as the errors upon which they will rely on their said appeal, to wit:

ASSIGNMENT OF ERRORS.

1.

That the above-named District Court erred in

overruling the demurrer of said defendant Thompson to the amended complaint of the plaintiff in said cause. [129]

2.

That said District Court erred in overruling the demurrer of said defendant J. M. Cummings to the amended complaint of the plaintiff in said cause.

3.

That said District Court erred in holding, on the trial of said cause and as set forth in its opinion and decision therein filed on April 27, 1912, in substance and effect that the burden of the evidence as to the *bona fides* of the sale in question in said cause was shifted from the plaintiff to the defendants.

4.

That said District Court erred in holding, in its said opinion and decision in said cause, that the original plaintiff therein had brought himself into privity with the real property in question in said cause, so as to have a standing in equity to maintain said action to set aside the transfer thereof for fraud against creditors.

5.

That said District Court erred in holding, in its opinion and decision in said cause, that the original plaintiff therein, before instituting said cause, had exhausted his remedy at law against said defendant Thompson for the enforcement of said plaintiff's judgment at law against him.

6.

That said District Court erred in holding, in its

said opinion and decision in said cause, that the mining claim in question was real estate and could therefore be reached in said cause in equity without an execution having been first levied thereon for the enforcement of said original plaintiff's judgment at law against said defendant Thompson.

7.

That said District Court erred in holding, in its said opinion and decision in said cause, that the saloon building and lot in [130] question were real estate and could therefore be reached in said cause in equity without an execution having been first levied thereon for the enforcement of said original plaintiff's judgment at law against said defendant Thompson.

8.

That said District Court erred in finding, in its finding of fact No. VI set forth in its findings of fact and conclusions of law filed in said cause on the 4th day of May, 1912, in substance and effect that the conveyance therein mentioned was made with intent to defraud the creditors of said defendant Thompson.

9.

That said District Court erred in making its so-called "conclusion of law" No. 1 set forth in its said findings of fact and conclusions of law.

10.

That said District Court erred in making its so-called "conclusion of law" No. 2 set forth in its said findings of fact and conclusions of law.

11.

That said District Court erred in making its con-

clusion of law No. 3 set forth in its said findings of fact and conclusions of law.

12.

That said District Court erred in making its so-called "conclusion of law" No. 4 set forth in its said findings of fact and conclusions of law.

13.

That said District Court erred in making its conclusion of law No. 5 set forth in its said findings of fact and conclusions of law.

14.

That said District Court erred in finding for the plaintiff in said cause on the issue of fraud.

15.

That said District Court erred in finding for the plaintiff in said cause on the issue of lack of consideration. [131]

16.

That said District Court erred in rendering said judgment hereby appealed from, in favor of said plaintiff and against said defendants in said cause.

Wherefore, said defendants and appellants pray that said judgment may be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, with directions for such further proceedings in said District Court as may be proper.

S. O. MORFORD, (T. R. S.)

Attorney for Eri Thompson, Defendant and Appellant.

THOMAS R. SHEPARD,

Attorney for J. M. Cummings, Defendant and Appellant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 15, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [132]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

**Order Allowing Appeal and Fixing Amount of Bond
for Costs and Amount of Bond for Supersedeas
in Appeal.**

Eri Thompson and J. M. Cummings, the defendants in the above-entitled cause, having this day filed in the above-named court their petition for allowance of an appeal on their part from the judgment rendered and entered therein by said court on the 4th day of May, 1912, with their assignment of errors upon which they will rely on said appeal, appended to said petition, and having presented their said petition and assignment of errors to the undersigned District Judge, presiding in said court, and moved thereon for an order allowing said appeal and fixing the amount of security for the costs of said appeal to be given by them thereon, and also fixing the amount of security for the costs and damages of said appeal to be given by them thereon in order to operate as a supersedeas of said judgment pend-

ing the determination, in case they shall be advised to give such supersedeas bond, and the undersigned having considered said petition and being fully advised on the premises;

On motion of Messrs. S. O. Morford and Thomas R. Shepard, attorneys for said defendants and appellants, it is ordered as follows:

First, that the appeal of said defendants prayed for in and by their petition be and it hereby is allowed;

Secondly, that the amount of the bond to be given by said appellants for the costs of said appeal (but not to operate as a supersedeas) be and it hereby is fixed at the sum of \$500, and that upon the filing of a bond for costs on said appeal in said sum conditioned as prescribed [133] by the statute in such case made and provided and approved by the undersigned, said appeal shall become effective;

Thirdly, that the amount of a further bond thereafter to be given by said appellants for the costs and damages of said appeal, in order to operate as a supersedeas of said judgment pending the determination of said appeal, in case they shall be advised to give such supersedeas bond, be and it hereby is fixed at the sum of \$2,500, and that upon the filing of such a supersedeas bond in said sum, conditioned as prescribed by the statute in such case made and provided and approved by the undersigned, within the time prescribed by law for a supersedeas on appeal, further proceedings upon said judgment shall be stayed until the determination of said appeal and

the filing of a mandate thereon in this court.

Done in open court, this 15th day of May, 1912.

EDWARD E. CUSHMAN,

District Judge, Presiding in the Above-named
Court.

Entered Court Journal No. 6, page 828.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 15, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy.
[134]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Bond on Appeal.

Know All Men by These Presents, that we, Eri Thompson, a defendant in the above-entitled action (by S. O. Morford, his attorney in said action, hereunto duly authorized), and J. M. Cummings, a defendant in said action (by Thomas R. Shepard, his attorney in said action, hereunto duly authorized), as principals, and John A. Nelson, of Seward, Alaska, and W. M. Sauers, of Seward, Alaska, as sureties, are held and firmly bound unto J. L. Reed, the plaintiff in said action, in the penal sum of Five Hundred Dollars (\$500.00), lawful money of the

United States of America, to be paid to said obligee, his representatives or assigns; for which payment, well and truly to be made, we bind ourselves and our respective heirs and representatives, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 10th day of May, 1912.

The condition of this obligation is such that, whereas lately, at a session of the District Court for the District of Alaska, Third Division, holden at Valdez in said third division, in an action pending in said court between the above-named obligee J. L. Reed, the plaintiff therein, and the above-named principal obligors Eri Thompson and J. M. Cummings, the defendants therein, a judgment and decree was made and entered by said court on the 27th day of April, 1912, in favor of said plaintiff and against said defendants, and said defendants are about to appeal from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit: [135]

Now, therefore, the condition of this obligation is such, that if said principal obligors, defendants and appellants as aforesaid shall prosecute their said appeal to effect, and answer all costs if they fail to

make their plea good, then this obligation shall be void; else valid.

ERI THOMPSON. [Seal]

By S. O. MORFORD,

His Attorney.

J. M. CUMMINGS, [Seal]

By THOMAS R. SHEPARD,

His Attorney.

JOHN A. NELSON. [Seal]

W. M. SAUERS. [Seal]

In presence of

CURTIS R. MORFORD.

M. S. BANBURY.

United States of America,

District of Alaska,—ss.

John A. Nelson and W. M. Sauers, being first duly sworn, each for himself deposes and says: That he is one of the persons named as sureties in and who executed the foregoing bond on appeal; that he is a resident within the District of Alaska, and is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; and that he is worth double the amount specified in said bond as the penal sum thereof, over and above all debts and liabilities, and exclusive of property exempt from execution.

JOHN A. NELSON.

W. M. SAUERS.

Subscribed and sworn to before me this 10th day of May, 1912.

CURTIS R. MORFORD,

Notary Public in and for the District of Alaska, Residing at Seward.

The foregoing bond is approved by me as a sufficient bond for costs on the appeal therein mentioned, this May 15th, 1912.

EDWARD E. CUSHMAN,
District Judge. [136]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 15, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [137]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff and Appellee,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants and Appellants.

Supersedeas Bond on Appeal.

Know All Men by These Presents, that we, Eri Thompson, a defendant in the above-entitled action (by S. O. Morford, his attorney in said action, hereunto duly authorized), and J. M. Cummings, a defendant in said action (by Thomas R. Shepard, his attorney in said action, hereunto duly authorized), as principals, and W. A. McNeiley, of Seward, Alaska, and W. M. Sauers, of Seward, Alaska, as sureties, are held and firmly bound unto J. L. Reed, the plaintiff in said action, in the penal sum of Two Thousand Five Hundred Dollars (\$2,500), lawful

money of the United States of America, to be paid to said obligee, his representatives or assigns; for which payment, well and truly to be made, we bind ourselves and our respective heirs and representatives, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 24th day of May, 1912.

The condition of this obligation is such that, whereas, lately, at a session of the District Court for the District of Alaska, Third Division, holden at Valdez, in said third division, in an action pending in said court between the above-named obligee J. L. Reed, the plaintiff therein, and the above-named principal obligors Eri Thompson and J. M. Cummings, the defendants therein, a judgment and decree was made and entered by said court on the 4th day of May, 1912, in favor of said plaintiff and against said defendants, and said defendants have appealed from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, and have given a bond as required by law for the costs of said appeal, and have served upon the adverse party a citation [138] duly issued in pursuance of said appeal, and desire now, within sixty days after the rendering of said judgment and decree, to give a further bond to supersede said judgment and stay the execution thereof until the determination of said appeal, as provided by law —the amount of which supersedeas bond has been fixed, in and by the order made by said district court in said action on the 15th day of May, 1912, allowing said appeal, at \$2,500:

Now, therefore, the condition of this obligation is such that if said principal obligors, defendants and appellants as aforesaid, shall prosecute their said appeal to effect, and, if they fail to make their plea good, shall answer all damages and costs, then this obligation shall be void; else, valid.

ERI THOMPSON. [Seal]

By S. O. MORFORD,

His Attorney.

J. M. CUMMINGS. [Seal]

By THOMAS R. SHEPARD,

His Attorney.

W. A. McNEILEY. [Seal]

W. M. SAUERS. [Seal]

In presence of

CURTIS R. MORFORD.

J. H. ROMIG.

United States of America,

District of Alaska,—ss.

W. A. McNeiley and W. M. Sauers, being first duly sworn, each for himself deposes and says: That he is one of the persons named as sureties in and who executed the foregoing bond on appeal; that he is a resident within the District of Alaska, and is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; and that he is worth Two Thousand Five Hundred Dollars (\$2,500), the amount specified in said bond as the penal sum thereof, over and above all debts and liabilities, and [139] exclusive of property exempt from execution.

W. A. McNEILEY.

W. M. SAUERS.

ifornia, be and it hereby is enlarged until and including the 14th day of July, 1912.

Done in court at Cordova, Alaska, this 25th day of May, 1912.

EDWARD E. CUSHMAN,
District Judge.

Entered Court Journal No. C.—1, page 282.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 25, 1912. Ed. M. Lakin, Clerk. [141]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff and Appellee,

v.

ERI THOMPSON and J. M. CUMMINGS,

Defendants and Appellants.

**Order Further Enlarging Time for Docketing Cause
on Appeal.**

It sufficiently appearing to the undersigned that on account of the accumulation of business in the office of the clerk of this Court it will be impracticable for the clerk to prepare, certify and transmit the record on the pending appeal in this cause in time for the filing of said record and the docketing of the cause on said appeal in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within the time limited

therefor by the citation issued on said appeal and the previous order of this court enlarging said time, on motion of the appellants' attorneys it is ordered, by the Court now here, that said time be and it is further enlarged until and including the 31st day of July, 1912.

Done in open court, this 29th day of June, 1912.

EDWARD E. CUSHMAN,
District Judge.

Entered Court Journal No. 6, page No. 857.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jun. 29, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [142]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

v.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

**Order Touching Transcript of Evidence and Record
on Appeal.**

Upon the stipulation between the parties to this cause appended to the certified transcript of evidence herein and filed with said transcript on the 22d day of June, 1912, and on motion of the defendants' attorneys, it is ordered by the Court now here, in accordance with said stipulation, that the clerk

of this Court, in making up, certifying and transmitting the record on appeal herein, do include said original transcript of evidence, with the original exhibits therein referred to or certified copies of such of said exhibits as are parts of the files and record in cause No. 233 in this Court, in such record on appeal as a part thereof, instead of making a copy of said transcript of evidence and said exhibits as a part of said record on appeal.

Done in open court this 29th day of June, 1912.

EDWARD E. CUSHMAN,

District Judge.

Entered Court Journal No. 6, page No. 856.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jun. 29, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [143]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 9.

J. L. REED,

Plaintiff,

v.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Citation.

United States of America,

District of Alaska,—ss.

The President of the United States of America: To

J. L. Reed, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of

*In the District Court for the Territory of Alaska,
Third Division.*

Certificate of Clerk District Court to Record.

United States of America,
Territory of Alaska,
Third Division,—ss.

I, Ed. M. Lakin, Clerk of the District Court, Territory of Alaska, Third Division, do hereby certify that the above and foregoing and hereto annexed 145 pages, numbered from 1 to 145, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the praecipe filed in my office on the 11th day of July, A. D. 1912.

That I hereby certify that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$33.10, has been paid to me by S. O. Morford, Esq., one of the attorneys for the defendants and appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 12th day of July, A. D. 1912.

[Seal]

ED. M. LAKIN,
Clerk.

By Thos. S. Scott,
Deputy Clerk. [145]

[Endorsed]: No. 2162. United States Circuit Court of Appeals for the Ninth Circuit. Eri Thompson and J. M. Cummings, Appellants, vs. J. L. Reed, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Third Division.

Received July 22, 1912.

F. D. MONCKTON,
Clerk.

Filed July 25, 1912.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.